
THE RIGHT TO PLAY

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Table of Contents

Abstract.....	2
Chapter 1: Introduction	1
1. Introduction	1
2. Thesis Structure and Methodology	3
3. Definition of Play	5
3.1. Attempts at a definition	6
3.2. The Difficulty of a Definition	12
3.3. The Committee on the Rights of the Child’s Definition	15
4. Conclusion	19
Chapter 2: The Importance of Play.....	20
1. Introduction	20
2. Cognitive Development	22
2.1. Literacy	23
2.2. Mathematics	25
2.3. Problem-solving	27
2.4. Creativity	29
3. Social Development	32
4. Emotional Development.....	38
5. Physical Development	44
6. Enhancing Capabilities.....	48
7. Conclusion	50
Chapter 3: Challenges to be Overcome in Realising the Right to Play.....	51
1. Introduction	51
2. Safe Space for Play	53
2.1. Safe Environments.....	54
2.2. Access to Nature	63
2.3. Children’s use of Public Space	68
3. The Scholarisation of Childhood	72
4. Humanitarian and Development Programmes	77
4.1. Crises	78
4.2. Poverty	81
5. The Girl Child	85
6. Technology and Play	87
6.1. Physical and Mental Health – Time and Space for Play.....	88
6.2. Online Risks.....	91
6.3. Exposure to Violence.....	93

6.4. Cognitive Ability and Cultural Development	94
6.5. Commercialisation and Marketisation.....	96
7. Conclusion - The Lack of Recognition of the Importance of the Right to Play	99
Chapter 4: The Legal History of the Right to Play	101
1. Introduction	101
2. Travaux Préparatoires	103
2.1. The Drafting History of the Declaration on the Rights of the Child	104
2.2. From Declaration to Convention: The Drafting History of Article 31	109
3. The Committee on the Rights of the Child	121
3.1. The Committee's Forms of Output.....	121
3.2. The Legal Status of the Committee's Outputs	124
3.3. The Committee's Outputs and the Right to Play	130
4. Conclusion	152
Chapter 5: The Scope and Content of the Right to Play	154
1. Introduction	154
2. Scope.....	155
3. Content	157
3.1. Indivisible, interrelated, and interdependent.....	157
3.2. "To Engage in".....	161
3.3. "Appropriate to the Age of the Child".....	161
3.4. AAAQ	164
4. Obligations Relating to the Right to Play	171
4.1. "To Undertake"	174
4.2. "All Appropriate Measures"	175
4.3. Maximum Extent of Available Resources	194
4.4. Progressive Realisation	198
4.5. Minimum Core	200
4.6. Non-Retrogression	202
4.7. International Cooperation	204
5. Conclusion	206
Chapter 6: A Multiple-Case Study of the United Kingdom and Tanzania. 208	
1. Introduction	208
1.1. Method choice and justification	208
1.2. Country choice and justification	210
1.3. Interview Sample and Data Collection	210
2. Discussion of Findings.....	212

2.1. Legislation: Incorporation of the Right to Play	213
2.2. Political and Community Support	230
2.3. Education and Planning	248
3. Conclusion	278
Chapter 7: Conclusion	281
Bibliography	291

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'The city streets will be filled with boys and girls playing' (Zechariah 8:5)

Abstract

The right to play has been widely regarded as a forgotten right – forgotten by states implementing the Convention on the Rights of the Child (Convention), ignored by the United Nations Committee on the Rights of the Child (Committee) in monitoring and providing guidance on the Convention, and neglected by human rights academics. Wide-ranging extensive research shows the vital importance of play in supporting the holistic development of the child. In light of this, the thesis scrutinises the right to play – the *raison d'être* of the right, the challenges faced in realising the right, and the obligations pertaining to the right. It does so in order to investigate the causes of the right's 'forgotten' status and to offer recommendations for remedying such. The thesis provides a vital investigation into and critique of the situation facing the realisation of the right to play, providing a necessary and overdue contribution to the child rights field.

The thesis examines the right to play and its implementation through analysing extensive multidisciplinary research on the value of play for children, both intrinsically and instrumentally, and the wide-ranging challenges surrounding children's play, providing in-depth discussion on implications for the realisation of the right to play. The thesis considers the legal background of the right to play, from the drafting process of the Declaration of the Rights of the Child and Convention to the work of the Committee in its General Comments, Concluding Observations and Days of General Discussion. The author then investigates the obligations pertaining to the right to play before triangulating the research in the thesis through a multiple case study of the United Kingdom and Tanzania. The thesis highlights elements of best practice, challenges and weaknesses in realising

the right to play, and recommendations for continued and improved realisation of the right to play.

Chapter 1: Introduction

1. Introduction

The right to play has been regarded as a forgotten right¹ – forgotten by states implementing the Convention on the Rights of the Child (Convention/CRC),² by the Committee on the Rights of the Child (Committee) in monitoring and providing guidance on the Convention, and neglected by human rights academics. It has been perceived as a luxury right³ and is described by the Committee as endangered⁴ and neglected.⁵ Research suggests that the right to play is vital to children's development and holds considerable intrinsic value.⁶ The right to play was included in both the 1959 Declaration on the Rights of the Child (Declaration)⁷ and the Convention. Despite this, the right to play has received minimal attention in child rights literature.⁸ The thesis offers a vital investigation and critique of the situation facing the realisation of the right to play, providing a necessary and overdue contribution to the literature.

The right to play is included in Article 31 of the Convention which reads:

¹ P David, *A Commentary on the United Nations Convention on the Rights of the Child, Article 31: The Right to Leisure, Play and Culture* (Nijhoff, 2006) para.42; R Hodgkin and P Newell, *Implementation Handbook for the Convention on the Rights of the Child* (3rd ed., UNICEF, 2007) 469; A Voce, *Policy for Play* (Policy Press, 2015) 8 and 13

² Convention on the Rights of the Child (adopted 20 November 1989, entry into force 2 September 1990) 1577 UNTS 3 (UNCRC)

³ David (n1); Hodgkin and Newell (n1)

⁴ Committee of the Rights of the Child (ComRC), 'Day of General Discussion: Implementing Child Rights in Early Childhood' (17 September 2004) para.9

⁵ Committee on the Rights of the Child (ComRC), 'General Comment No.17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art.31)' (2013) CRC/C/GC/17 (GC17) para.43

⁶ Discussed in Chapter 2

⁷ UN Declaration on the Rights of the Child, GA Res 1386 (XIV) UN Doc. A/4354 (1959)(adopted 20 November 1959) (Declaration)

⁸ Notable exceptions include: David (n1); Hodgkin and Newell (n1); C Davey and L Lundy, 'Towards Greater Recognition of the Right to Play: An Analysis of Article 31 of the UNCRC', [2011] 25 *Child Soc* 3; G Lansdown and J Tobin (ed.) 'Article 31: The Rights to Rest, Leisure, and Play' in J Tobin *The UN Convention on the Rights of the Child: A Commentary* (OUP, 2019)

1. States Parties recognise 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

The right to play appears alongside the child's rights to rest, leisure, recreational activities, and to cultural life and the arts. This thesis addresses the right to play by providing a thorough examination of the right, from a child's rights perspective. It scrutinises the context surrounding the right – its *raison d'être*, the challenges faced in realising the right, and the obligations pertaining to the right. It does so in order to investigate the cause of the right's status as forgotten or luxury and to offer recommendations for addressing this. It argues that an inherent lack of understanding of the importance and nature of the right to play underpins its status, and argues that awareness-raising and consistent engagement with the right by the Committee is necessary to address this and promote its realisation. It provides recommendations on realising the right to play, drawing on the research within the thesis.

Play is primarily associated with young children.⁹ By taking a child's rights approach, this thesis examines the right to play for all children, including adolescents. The CRC defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.¹⁰ A child's rights approach to play places children's dignity

⁹ Evidenced particularly in Chapters 2, 3 and 6

¹⁰ Article 1, UNCRC

and agency as central to understanding the right and emphasises its legal protection. This thesis values the intrinsic motivation for play, rather than viewing the right to play as solely instrumental.¹¹ It thus sits within an empowerment and emancipation school of thought, perceiving children as both beings and becomings.¹²

2. Thesis Structure and Methodology

This thesis is socio-legal,¹³ undertaking a 'law in action'¹⁴ approach. The wide-ranging and multifaceted methodology undertaken for this thesis provides a comprehensive analysis of the right. The thesis consists of seven chapters. This introduction contextualises the thesis within the child rights literature, justifies the thesis topic, and outlines its methodology. It examines the definition of play, illustrating the need for clarity surrounding the right.

Whilst acknowledging the intrinsic value of play for children, Chapter two examines multidisciplinary research on the instrumental value of play for child development, focusing on cognitive, social, emotional, and physical development. It then reflects on how the capability approach addresses children's play and on how this relates to the understanding of the right to play. The chapter finishes by discussing how both the instrumental and intrinsic value of play supports the importance of play for children, the need to ensure full realisation of the right to play, and justifies why the right to

¹¹ Chapter 2

¹² K Hanson, 'Schools of Thought in Children's Rights', in M Leibel (ed) *Children's Rights from Below: Cross-Cultural Perspectives* (Palgrave MacMillan, 2012) 74 and 77

¹³ R Cranston, 'Law and Society: A Different Approach to Legal Education' [1978] 5 *MULRev* 54; R Cotterell, 'Socio-Legal Studies, Law Schools, and Legal and Social Theory', (*QMUL School of Law Legal Studies Research Paper No.126/2012*, 2012)

¹⁴ R Pound, 'Law in Books and Law in Action' [1910] 44 *AmLRev* 12

play should be afforded further attention by the Committee and States Parties.

Chapter three researches wide-ranging challenges facing the realisation of the right to play, including access to safe space for play, perceptions of play and children in the public space, the scholarisation of childhood, technology, as well as unique challenges facing children in conflict situations, living in poverty and girl children. This examination of multi-disciplinary research reveals the extent of the challenges that states must overcome to realise the right. It begins to explore the measures necessary for implementation of the right, and reveals particular difficulties facing adolescents in the realisation of their right to play.

Chapter four then provides a thorough examination of the legal history of the right to play. Drawing upon archival research, Chapter four analyses the *travaux préparatoires* for the Declaration on the Rights of the Child and Convention on the Rights of the Child, to ascertain reasons behind including the right to play and how drafters perceived the right and its implementation. It then considers the work of the Committee through textual analysis of its General Comments, Concluding Observations and reports and recommendations from Days of General Discussion in order to examine the Committee's perception of the right, and suggests how its treatment of the right impacts upon its realisation.

Chapter five rests upon doctrinal study of the Convention to investigate the obligations pertaining to the right to play. It frames States Parties obligations under the rubric of Article 4 of the Convention and utilises the tripartite typology framework as done so by the Committee in General Comment 17. It notes that the right to play's status as an economic, social and cultural right introduces a particular framework for implementation, and

provides detailed discussion on how this framework relates to the realisation of the right.

Chapter six triangulates the research throughout the rest of the thesis using a multiple-case study of the United Kingdom and Tanzania. This study involves empirical research through expert interviews, textual analysis of policies, and doctrinal research into the legislation of the United Kingdom and Tanzania. It explores the incorporation and implementation of the right to play in each country. Through expert interviews, the chapter investigates factors necessary for the implementation of the right and provides detailed analysis of the state of play in two specific areas – education and planning.

The final chapter concludes the thesis by drawing on the discussion throughout the thesis to summarise the key findings of the thesis and provide recommendations for overcoming the right to play's historical status as a luxury and forgotten right, and for realising the right to play through incorporation and implementation.

3. Definition of Play

Central to the right to play is the concept of play. The question 'what is play?' sits upon decades of research aimed at grappling with different forms, consequences, and characteristics of play to arrive at a scientific definition that holds upon review. This section examines key literature on the definition of play across a number of disciplines, demonstrative of key arguments within this debate. This multidisciplinary research enables a deep understanding of the concept of play, vital for conceptual clarity and successful implementation of the right to play.

3.1. Attempts at a definition

Huizinga was the first to attempt to provide an exact definition of play,¹⁵ although he was not the first to discuss the phenomenon. His *Homo Ludens*, 'playing man', grapples with the concept of play and finds it to be a better description of 'the essential nature of people' than the idea of *homo sapiens*, 'wise man'.¹⁶ Huizinga explored the culture and nature of play and came to define it as follows:

Summing up the formal characteristics of play we might call it a free activity standing quite consciously outside 'ordinary' life as being 'not serious', but at the same time absorbing the player intensely and utterly. It is an activity connected with no material interest, and no profit can be gained by it. It proceeds within its own proper boundaries of time and space according to fixed rules and in an orderly manner. It promotes the formation of social groupings which tend to surround themselves with secrecy and to stress their difference from the common world by disguise or other means.¹⁷

This definition has several key elements: play is voluntary; it is outside ordinary life and not serious; no profit can be gained by it; it is bound by its own rules; and it promotes social groupings based on secrecy. Huizinga's definition excludes biopsychological explanations for play. He argues that these do not capture the essence of play, but offer partial explanations for play and tell us 'little about its nature and significance'.¹⁸ Huizinga suggests that biopsychological explanations do not explain the 'intensity of, and

¹⁵ R Anchor, 'History and Play: Johan Huizinga and his Critics' [1978] 17 *Hist&Theory* 63, 63

¹⁶ M Kalliala, *Play Culture in a Changing World* (OpenUP, 2006) 17

¹⁷ J Huizinga, *Homo Ludens: A Study of the Play-Element in Culture* (Routledge, [1938] 1949) 13

¹⁸ Anchor (n15) 78

absorption' of play.¹⁹ Huizinga argues that the most crucial aspect of play is that the players 'plainly experience tremendous fun and enjoyment'. He states that 'it is precisely this fun-element that characterises the essence of play'.²⁰

This absorption reflects Csikszentmihalyi's concept of 'flow'²¹ – an all-encompassing experience, with players losing track of 'typical concerns such as time of day, external happenings, personal anxieties, and even the sense that they are separated from the situations in which they are acting'.²² Brown supports this characterisation, suggesting that play involves 'freedom from time' as, when 'fully engaged in play, we lose a sense of the passage of time'.²³ He goes on to argue that in play, we 'experience diminished consciousness of self' and are 'fully in the moment, in the zone'.²⁴ Huizinga contends that this absorption resists analysis and logical interpretation,²⁵ and claims that play is an irreducible phenomenon because it precedes human society and culture itself.²⁶

Huizinga's definition has been extensively discussed. Caillois criticised it as simultaneously too broad and too narrow.²⁷ Gombrich argued that Huizinga's ambiguity arose from an essentialist approach to play, treating play as an *Urphänomen*.²⁸ Caillois critiqued the inclusion of secrecy in Huizinga's definition, arguing that although play *may* be engaged in with secrecy,

¹⁹ Huizinga (n17) 3

²⁰ Ibid 1, 3

²¹ M Csikszentmihalyi, *Flow and the Foundations of Positive Psychology: The Collected Works of Mihaly Csikszentmihalyi* (Springer, 2014)

²² T Henricks, 'The Nature of Play' [2008] 1 *AmJPlay* 157, 162

²³ S Brown, *Play: How it Shapes the Brain, Opens the Imagination, and Invigorates the Soul* (Avery 2000) 17

²⁴ Ibid

²⁵ Huizinga (n17) 3

²⁶ Ibid 1; Anchor (n15) 78

²⁷ R Caillois, *Man, Play and Games* (Free Press, [1958] 1961) 4

²⁸ E Gombrich, 'Huizinga's Homo Ludens', in W Koops, E Kossmann and G Plaat (eds.) *Johan Huizinga 1872-1972: Papers Delivered to the Johan Huizinga Conference, Gronigen 11-15 December 1972* (Nijhoff, 1972) 291

ultimately 'play tends to remove the very nature of the mysterious'.²⁹ Brown echoes this critique, emphasising that a 'hallmark... of play is that *anyone* can do it'.³⁰ Despite Caillois' critique of Huizinga's definition, Caillois' characterisation of play holds some similarities. He defines play 'as an activity which is essentially: 1) Free [or voluntary]; 2. Separate [or detached from ordinary life]; 3. Uncertain [or unpredictable]; 4. Unproductive...; 5. Governed by rules; 6. Make-believe'.³¹

A fundamental aspect of Huizinga's definition of play that has faced criticism is his view that play is 'an activity connected with no material interest, and no profit can be gained by it'.³² This characteristic is included within Caillois' definition as 'unproductive'.³³ Ehrmann disputes this characterisation, arguing that even when play is 'a "pure" expenditure, an expenditure *for* nothing, it consumes something nevertheless, if only time and energy'.³⁴ Ehrmann suggests that it would be appropriate to expect this expenditure to produce something. He argues that, as play exists within the exterior and interior of the world, it cannot be 'isolated as an activity without *consequences*'³⁵ as 'the expenditure made in it is part of a circuit which reaches beyond the spatial and temporal limits of play'.³⁶ The notion that play is unproductive ignores developmental benefits of play and diminishes the value of fun and enjoyment in play.³⁷

This discussion of a Means/Ends aspect of play has continued. Smith and Vollstedt conducted an empirical study to test several elements of definitions

²⁹ Caillois (n27) 4

³⁰ Brown (n23) 20

³¹ Caillois (n27) 9-10

³² Huizinga (n17) 13

³³ Caillois (n27) 9-10

³⁴ J Ehrmann, 'Homo Ludens Revisited' [1968] 41 *Yale FrStud* 31, 42

³⁵ *Ibid*

³⁶ *Ibid* 43

³⁷ Chapter 2

of play: Flexibility – the behaviour varies in form or context; Positive Affect – the behaviour 'is pleasurable or enjoyable'; Intrinsic Motivation – 'it is done for its own sake and not brought about by basic bodily needs or by external rules of social demands'; Nonliterality – 'it is not carried out seriously but has an "as if" or pretend quality'; and Means/Ends – 'the child is more interested in the performance of the behaviour itself than in the results or outcome of the behaviour'.³⁸ Video footage of children in a nursery school was examined, by participants with wide-ranging experience in assessing child behaviour, for play behaviour. The lowest values were given for Intrinsic Motivation and Means/Ends, although the data on Intrinsic Motivation was found to be nonsignificant, and the highest values for Nonliterality. The greater number of criteria present increased the likelihood of a play judgement.³⁹

A key challenge in characterising play as dominated by means not ends, or as being unproductive, is the amount of play that seems to have a goal or end in sight. This is most visible with constructive play.⁴⁰ Burghardt suggests that a Means/Ends characteristic would be better addressed as 'not fully functional' rather than 'purposeless'.⁴¹ He highlights problems surrounding constructive play, emphasises physiological toning in play, and argues that although the immediate function of play may not be recognised it does not mean that there is not one.⁴² Burghardt states, that 'frequent use of the phrase "no apparent function" in reference to play is a largely useless criterion'.⁴³ It is potentially dangerous for undermining realisation of the

³⁸ P Smith and R Vollstedt, 'On Defining Play: An Empirical Study of the Relationship between Play and Various Play Criteria' [1985] 56 *ChildDev* 1042, 1044

³⁹ Ibid 1046

⁴⁰ Ibid 1049

⁴¹ G Burghardt, 'Defining and Recognising Play', in A Pellegrini (ed) *The Oxford Handbook of the Development of Play* (OUP, 2011) 14

⁴² Ibid

⁴³ Ibid

right to play. Brown similarly characterised play as “*apparently purposeless*”.⁴⁴ He refers to a conversation with Fagen, a leading animal play theorist, who described play as preparing animals ‘for an evolving planet’.⁴⁵ Play may have purpose, but this purpose does not affect its experience, hence it *appears* purposeless.⁴⁶ Play may therefore have hidden value. Brown reasons that ‘the pervasiveness of play throughout nature’, history and evolution suggests that play must have a purpose and ‘has a survival value’.⁴⁷

Rubin, Fein and Vandenberg defined play as including six characteristics: 1) it is intrinsically motivated, and is not governed or induced by external elements; 2) it is spontaneous, self-imposed and free; 3) it asks “What can I do with this object or person”; 4) it is pretence, i.e. nonliteral; 5) it is ‘free from externally imposed rules’; and 6) it ‘involves active engagement’.⁴⁸ Rubin et al. discussed the means/ends element within their second characteristic, but focused on freedom experienced by the player to set their own goals and be spontaneous in their treatment: ‘free from the straight jacket of means-ends considerations, the individual is able to dismantle [and reassemble]’ their play and play goals.⁴⁹ Brown similarly states that play is hallmarked by ‘improvisational potential’ – an openness to ‘serendipity and chance’ – and that the player is not ‘locked into a rigid way of doing things’.⁵⁰

⁴⁴ Brown (n23) 16, although Fagen argues that play is not necessary for survival

⁴⁵ Ibid 29

⁴⁶ Ibid 30

⁴⁷ Ibid 30-31

⁴⁸ R Coplan, K Rubin and L Findlay, ‘Social and Non-social Play’ in D Fromberg and D Bergen (eds.) *Play from Birth to Twelve* (2nd ed. Garland, 2006) 75; K Rubin, G Fein and B Vandenberg, ‘Play’ in E Hetherington (ed.) *Handbook of child psychology: Vol 4. Socialisation, personality and social development* (Wiley, 1984) 698-700

⁴⁹ Rubin et al. (n48) 698

⁵⁰ Brown (n23) 18

This fits closely with Rubin et al.'s fifth characteristic – 'free from externally imposed rules'.⁵¹ Although they focus discussion on differences between play and games, they highlight the problems with suggesting that all games are not play and argue that sociodramatic play is 'governed by rules'.⁵² Research shows that play cannot be *forced*.⁵³ It must be a freely chosen activity. While adults can create environments conducive to play⁵⁴ children have shown that if asked to do, or directed in, activities that may to an outsider look like play, children attribute them as work.⁵⁵ This supports ensuring that weight is given to the voluntary characteristic of play when defining play.⁵⁶

Nonliterality, included as a definitional characteristic of play by Rubin et al., is the notion that 'play behaviours are not serious renditions of the activities they resemble' but are 'characterised by an "as if" representational set'.⁵⁷ Smith and Vollstedt's study saw the highest values in assessing play criteria for nonliterality. Therefore, from an observer's perspective, nonliterality 'gives the most confident judgement of play', although it did not show consistently in cases of constructive play.⁵⁸ Rubin et al. argue that nonliterality 'restricts play to behaviours generally referred to as *pretense*' and eliminates a wide variety of play activities without a pretense or nonliteral element.⁵⁹

The final characteristic to be addressed here is 'active engagement'. Rubin et al. include this to differentiate play behaviour from 'lounging and aimlessly

⁵¹ Coplan et al. (n48) 75; Rubin et al. (n48) 698-700

⁵² Rubin et al. (n48) 699

⁵³ W Blumenfeld, 'Observations concerning the Phenomenon and Origin of Play' [1941] 1 *PhilPhenomRes* 470 473

⁵⁴ Rubin et al. (n48) 701

⁵⁵ N King, 'Play: The Kindergartners' Perspective' [1979] 80 *ElementarySchJ* 80, 84

⁵⁶ Burghardt (n41) 14; Ibid 85-86; Huizinga (n17) 7-8; Caillois (n27) 9-10; Brown (n23) 17

⁵⁷ Rubin et al. (n48) 699

⁵⁸ Smith and Vollstedt (n38) 1049

⁵⁹ Rubin et al. (n48) 699

loafing'.⁶⁰ This is not to say that play cannot originate from a place of boredom or satiation.⁶¹ Instead, the emphasis is on play as an active behaviour that cannot be experienced passively. Rubin et al. entreat against excluding daydreaming from play, suggesting this 'may reflect a bias toward defining play engaged in by young children and nonhuman animals'.⁶² They describe daydreaming as involving 'playing' with ideas.⁶³ Therefore, although play is not passive, it may not always manifest as expected.

3.2. The Difficulty of a Definition

Following Huizinga, the approach taken to define play has been to outline its key characteristics instead of defining the concept as a whole. Brown resists defining play due to its varied and personal nature,⁶⁴ yet acknowledges that definition protects play from being viewed as 'squishy, marshy ground on which to build'.⁶⁵ However, after attempting to define play, he declares that all definitions fall short.⁶⁶ Fagen summarises this frustration, stating that 'the most irritating feature of play is not the perceptual incoherence, as such, but rather that play taunts us with its inaccessibility'.⁶⁷

Vandenberg addresses the elusive nature of play in his chapter *Play: A Concept in Need of a Definition?*.⁶⁸ He asks whether the ambiguity of the term "play" should lead to its rejection as a useful concept and whether the problems in defining play are unique.⁶⁹ The search for a single operational definition of play rests upon a desire to remove ambiguities 'which result in

⁶⁰ Ibid

⁶¹ Blumenfeld (n56) 476-477

⁶² Rubin et al. (n48) 700

⁶³ Ibid

⁶⁴ Brown (n23) 15-16

⁶⁵ Ibid 16

⁶⁶ Ibid 20-21

⁶⁷ R Fagen, *Animal Play Behaviour* (OUP, 1981) cited in B Sutton-Smith, *The Ambiguity of Play* (HUP, 1997) 2

⁶⁸ B Vandenberg, 'Play: A Concept in Need of a Definition?', in D Pepler and K Rubin, *The Play of Children: Current Theory and Research* (Karger, 1982) 15-20

⁶⁹ Ibid 15

ceaseless argument and dissention' and to secure inter-researcher agreement, yet this goal is often missed.⁷⁰ This difficulty is not unique to play. It is found with concepts such as light, intelligence, language, altruism, empathy, and aggression,⁷¹ including concepts within the Convention on the Rights of the Child such as identity.⁷²

A significant shortcoming of operationalism is that 'the ontological status of an entity is contingent on whether a reliable, operational definition can be established'.⁷³ This suggests that failure to produce a reliable and operational definition of play should result in its elimination from scientific study.⁷⁴ It is important to view difficulties of definition in context, and to underline that difficulty faced in providing a clear definition of such concepts 'is not an ipso facto reason for dismissing them'.⁷⁵ Matthews and Matthews argue that attempts at operational definitions of natural concepts have become 'little more than methodological window dressing' due to difficulties of definition.⁷⁶

Sutton-Smith in *Ambiguities of Play* tried to address reasons for lack of agreement between scholars on the definition of play. Sutton-Smith states that all seven types of ambiguity apply to play: reference, referent, intent, sense, transition, contradiction and meaning.⁷⁷ Part of the difficulty is that it is addressed from such a broad range of disciplines and perspectives, with scholars analysing play for different purposes.

⁷⁰ W Matthews and R Matthews, 'Eliminating Operational Definitions: A Paradigm Case Approach to the Study of Fantasy Play', in D Pepler and K Rubin, *The Play of Children: Current Theory and Research* (Karger, 1982)21

⁷¹ Vandenberg (n68) 17; Rubin et al. (n48) 697; Ibid 22

⁷² G Stewart, 'Interpreting the Child's Right to Identity in the UN Convention on the Rights of the Child' [1992] 26 *FamLQ* 221

⁷³ Vandenberg (n68) 15

⁷⁴ Ibid 16

⁷⁵ Ibid 17

⁷⁶ Matthews and Matthews (n70) 25

⁷⁷ Sutton-Smith (n67) 2, referencing W Empson, *Seven Types of Ambiguity* (Meridan, 1955)

Some scholars have argued that instead of trying to define play, it would be better to 'dispense with the concept of play entirely'.⁷⁸ Schlosberg suggested that issues 'subsumed' under the concept of play were better handled as individual topics, and argued that categories such as 'playful activities' were 'so loose' that they were rendered 'almost useless for modern psychology'.⁷⁹ Difficulties in providing an operational definition of concepts such as play, alongside arguments suggesting the concept of play is too narrow or too broad, underscore the challenges facing those attempting a clear and workable definition. Nevertheless, Vandenberg argues that aspiration for, and attempts at, a precise definition of play can further refine the concept, and warns against impatience and the potential to 'throw the playful baby out with the bathwater'.⁸⁰ He argues that play should be valued equally to other "more important' psychological phenomena',⁸¹ while bearing in mind the dependence of a definition of play on 'cultural, contextual, developmental and interpersonal' factors.⁸²

This discussion demonstrates the scope of problems that arise when defining play. It exposes nuances that must be balanced in order to arrive at a definition of play that is neither too narrow nor too broad, and it questions the value of definition. Nevertheless, to define the scope of the right to play and encourage realisation of the right it is necessary to undertake this task, with the caveat that defining fluid concepts is wrought with difficulties. When assessing the Committee's definition of play it is necessary to remain aware of the ambiguities of play and difficulties in operationalising the concept.

⁷⁸ Rubin et al. (n48) 697, citing H Schlosberg, 'The Concept of Play' [1947] 54 *Psycho/Rev* 229

⁷⁹ Schlosberg (n78) 231

⁸⁰ Vandenberg (n68) 19

⁸¹ *Ibid* 20

⁸² *Ibid* 19-20

3.3. The Committee on the Rights of the Child's Definition

The Committee attempted to provide clarity and normative content to the right to play in General Comment 17 *on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts*, where it defined play. The Committee has not offered additional definitions for play elsewhere so this definition is the primary source for understanding the Committee's interpretation of play. This section considers key elements of the Committee's definition of play, specified as follows:

Children's play is any behaviour, activity or process initiated, controlled and structured by children themselves; it takes place whenever and wherever opportunities arise. Caregivers may contribute to the creation of environments in which play takes place, but play itself is non-compulsory, driven by intrinsic motivation and undertaken for its own sake, rather than as a means to an end. Play involves the exercise of autonomy, physical, mental or emotional activity, and has the potential to take infinite forms, either in groups or alone. These forms will change and be adapted throughout the course of childhood. The key characteristics of play are fun, uncertainty, challenge, flexibility and non-productivity. Together, these factors contribute to the enjoyment it produces and the consequent incentive to continue to play. While play is often considered non-essential, the Committee reaffirms that it is a fundamental and vital dimension of the pleasure of childhood, as well as an essential component of

physical, social, cognitive, emotional and spiritual development.⁸³

The Committee emphasises the voluntary nature of play. This is stressed heavily in academic literature.⁸⁴ References in the Committee's definition to play as 'initiated, controlled and structured by children themselves', and as 'non-compulsory', and involving 'exercise of autonomy', highlight the degree to which the Committee sees this voluntary element as vital to the experience and exercise of the right. This characteristic is one of the most consistent in definitions of play and is central to the child's recognition of play.⁸⁵ It is therefore positive that the Committee emphasises the voluntary nature of play.

The Committee includes non-productivity in its definition. There is a lack of clarity around this characteristic, despite its frequent use in definitions.⁸⁶ The Committee details that play is 'undertaken for its own sake, rather than as a means to an end'. It emphasises motivation for play, rather than removing the possibility of productive play. The Committee continues by stressing the role of play in development, indicating a belief that that play may be productive and may simply *appear* purposeless.⁸⁷ In emphasising motivations for play the Committee focuses on the child and its intentions in play, underscoring the voluntary nature of play.

The Committee highlights the adaptable nature of the experience of play throughout childhood. This reflects the individual nature of play, and that forms of play may change 'appropriate to the age of the child'. The

⁸³ GC17 para.14(c)

⁸⁴ Rubin et al. (n48) 698; Blumenfeld (n53) 473; King (n55) 84; Burghardt (n41) 14; Huizinga (n17) 7-8; Caillois (n27) 9-10; Brown (n23) 17

⁸⁵ King (n55) 84

⁸⁶ Huizinga (n17) 13; Caillois (n27) 9-10; Ehrmann (n34) 42-43; Smith and Vollstedt (n38)

⁸⁷ Burghardt (n41) 14

Committee elaborates, stating that play has 'infinite forms', can be engaged in as groups or individually, and can be a physical, mental or emotional activity. This allows for inclusion of activities such as daydreaming, and supports the idea that play can involve a wide variety of activities.⁸⁸ However, the Committee may be criticised for providing too broad a definition of play by stating that it is 'any behaviour, activity, or process initiated, controlled and structured by children themselves'. This raises questions over where to draw the line between play and other activities, and whether all actions initiated by a child constitutes play. This reiterates problems of attempting to define play and demonstrates that the right to play still suffers from a lack of conceptual clarity.

The difficulty of defining play is exacerbated when trying to distinguish between the right to play and the rights to leisure, rest and recreation. The Committee attempted to offer clarity through providing definitions for the latter alongside their definition of play, as follows:

Rest: 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 wellbeing. 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.

Leisure: Leisure refers to time in which play or recreation can take place. It is defined as free or unobligated time that

⁸⁸ Rubin et al. (n48) 700

does not involve formal education, work, home responsibilities, performance of other life-sustaining functions or engaging in activity directed from outside the individual. In other words it is largely discretionary time to be used as the child chooses ...

Recreational activities: Recreation is an umbrella term used to describe a very broad range of activities, including, inter alia, participation in music, art, crafts, community engagement, clubs, sports, games, hiking and camping, pursuing hobbies. It consists of activities or experiences, chosen voluntarily by the child, either because of the immediate satisfaction provided or because he or she perceives that some personal or social value will be gained by accomplishing them. Recreation often takes place in spaces specifically designed for it. While many recreational activities may be organised and managed by adults, recreation should be a voluntary activity. Compulsory or enforced games and sports or compulsory involvement in a youth organisation, for example, do not constitute recreation.⁸⁹

These definitions differentiate between the Article 31 rights and confirm that the right to play is unique. This justifies examination of the right to play as a standalone right. Elements of these definitions demonstrate the interrelated nature of these rights. The right to play would not, for example, be realised if a child did not have their rights to rest and leisure realised, as

⁸⁹ GC17 para.14

time and space for play would not be afforded. Aspects of the interrelated nature of these rights are addressed throughout the thesis as appropriate. A fuller examination of each right is not within the scope of this thesis.

4. Conclusion

This discussion has shown that there are significant difficulties faced in defining a nuanced and abstract concept such as play. In attempting to define play the Committee appears to provide a broad definition to encompass a wide scope of manifestations of play, yet risks a lack of conceptual clarity in doing so. The Committee's definition emphasises some characteristics that have consistently appeared in definitions of play, such as the voluntary nature of play, echoing broader play literature. The concept of play is complex, and much more clarity is needed surrounding the right. This complexity has significant implications for the realisation of the right to play, and this thesis provides a vital examination of the right in order to provide greater clarity to the right. The next chapter explores the importance of play, and thus the right to play, for children.

Chapter 2: The Importance of Play

1. Introduction

When attributing value to an item, event, or experience, we can attribute instrumental value or intrinsic value. The former can be understood as the value that an object or experience has 'as an end'; it is valuable solely by what it will produce, or help to produce.¹ Intrinsic value can be understood as the independent value of an object or experience *in itself* or *for its own sake*.² The discussion in the previous chapter shows that play has considerable intrinsic value, but suggests it may also have instrumental value. Acceptance of the right to play's intrinsic value – play is fun³ – does not prescribe denial of the instrumental value of the right to play, nor a belief that the two cannot overlap. This chapter acknowledges the considerable intrinsic value of play for children, whilst examining extensive research on the importance of play for child development. This has been a topic of research for many years.⁴ Literature exploring the importance of play and its role in development is extensive. Indeed, 'the significant contribution of play to young children's development is well documented in child psychology, anthropology, sociology, and in the theoretical frameworks of

¹ S Kagan, 'Rethinking Intrinsic Value' [1998] 2 *JEthics* 277, 278

² For discussion on intrinsic value see: J O'Neill, 'The Varieties of Intrinsic Value' [1992] 75 *Monist* 119 (O'Neill describes three different meanings/forms of intrinsic value, relating them to nature and non-human beings, and an environmental ethic); RE Carter, 'The Importance of Intrinsic Value' [1968] 28 *PPR* 567 (Carter discusses the works of Beardsley and Moore in defining intrinsic value, and shows that there are differences between intrinsic value of objects and experiences); Ibid 15

³ M Csikszentmihalyi, 'Play and Intrinsic Reward', in M Csikszentmihalyi (ed) *Flow and the Foundations of Positive Psychology: The Collected Works of Mihaly Csikszentmihalyi* (Springer, 2014) 136; J Nicholson et al., 'Listening to children's perspectives on play across the lifespan: Children's right to inform adults' discussion of contemporary play' [2014] 3 *IJP* 136, 141; NM Glenn et al., 'Meanings of Play Among Children' [2012] 20 *Childhood* 185, 192

⁴ L Vygotsky, 'Play and its role in the mental development of the child' [1967] 5 *SovietPsychol* 6; J Buell et al., 'Collateral Social Development Accompanying Reinforcement of Outdoor Play in a Preschool Child' [1968] 1 *JApplBehavAnal* 167; S Herrington and M Brussoni, 'Beyond Physical Activity: The Importance of Play and Nature-Based Play Spaces for Children's Health and Development' [2015] 4 *CurrObesReps* 477

education, recreation, and communications'.⁵ Play offers distinct benefits and functions for children's cognitive, social, physical and emotional development. This chapter provides an overview of discussion around play and these four key areas of development.

It begins with an exploration of the role of play in assisting children's cognitive development, reflecting on four specific areas – literacy, mathematics, problem-solving and creativity. It will then examine the role of play for social development, emotional development and physical development in turn. This discussion will demonstrate the fundamental importance of the implementation of the right to play for the holistic development of the child. In so doing, the chapter evidences the need for realising the right to play and provides a foundation for a move away from viewing play as a "luxury"⁶ and towards play as a basic tenet of life and fundamental right.

Philosophers such as Plato defended the role of play in childhood for development, as 'whatever a man intends to become good at, this he must practice from childhood: whether he is playing or being serious... the housebuilder should play at games that educate in housebuilding, and the farmer similarly'.⁷ Plato emphasises that this 'practice' should not be done laboriously but rather through 'games to direct the pleasures and desires of children toward those activities in which they become perfect'.⁸ Groos argued that through play, the child could exercise 'inborn dispositions, to

⁵ J Hewes, 'Let the Children Play: Nature's Answer to Early Learning' (Early Childhood Learning Knowledge Centre) 1, referencing J Bruner et al., (eds.) *Play: Its role in development and evolution* (Penguin Books, 1976)

⁶ P David, *A Commentary on the United Nations Convention on the Rights of the Child, Article 31: The Right to Leisure, Play and Culture* (Nijhoff, 2006) para.42; R Hodgkin and P Newell, *Implementation Handbook for the Convention on the Rights of the Child* (3rd ed., UNICEF, 2007) 469

⁷ Plato, *Book I*, in T Pangle, *The Laws of Plato* (UCP, 1988) 23:643d

⁸ Ibid

strengthen and increase his inheritance in the acquisition of adaptations to his complicated environment'.⁹ Rousseau viewed play as a tool for civilising children.¹⁰ Kant perceived free play as necessary for cognition, understood through imagination and understanding,¹¹ and as having a role in liberating the spirit.¹²

2. Cognitive Development

Animal research suggests that play has a significant role in developing the physical brain, taking development that occurs during sleep 'one step farther'.¹³ Play is correlative to brain mass,¹⁴ and promotes the formation of new connections between neurons and 'disparate brain centres'.¹⁵ Scientists have evidenced that play refines the control of the prefrontal cortex over other neuronal circuits,¹⁶ induces 'structural changes in the neurons of the mPFC [medial prefrontal cortex]',¹⁷ and is necessary for healthy development of subcortical regions, namely the amygdala (important for emotional regulation) and the dorsal raphe nuclei (important for managing serotonin in situations of fear and anxiety).¹⁸ This neurological development supports executive function and these 'play-induced neuronal changes result in increased dendritic plasticity when exposed to other experiences later in life'.¹⁹ Brown refers to play as 'one of the most advanced methods nature

⁹ K Groos, *The Play of Man* (William Heinemann, 1901) 2; K Groos, *The Play of Animals* (Appleton, 1898)

¹⁰ P Bateson and P Martin, *Play, Playfulness, Creativity and Innovation* (CUP, 2013) 7

¹¹ I Kant, *Kant's Critique of Judgement* (JH Bernard tr, Gutenberg, 1914) §9; H Ginsbourg, 'Kant's Aesthetics and Teleology', *The Stanford Encyclopedia of Philosophy*, (Fall edn, 2014) <<http://plato.stanford.edu/entries/kant-aesthetics/#2.3.2>> accessed September 2016

¹² Kant (n11); Bateson and Martin (n10)

¹³ S Brown, *Play: How it shapes the brain, opens the imagination, and invigorates the soul*, (Avery 2010) 41

¹⁴ J Byers, 'The distribution of play behaviour among Australian marsupials' [1999] 3 *JZool* 349

¹⁵ Brown (n13) 41

¹⁶ S Pellis, V Pellis and B Himmler, 'How Play Makes for a More Adaptable Brain: A Comparative and Neural Perspective' [2014] 7 *AmJPlay* 73, 73

¹⁷ Ibid 89

¹⁸ Ibid 89-90

¹⁹ Ibid 88

has invented to allow a complex brain to create itself'.²⁰ It evidences that play has a unique role in cognitive development.

2.1. Literacy

The development of literacy through play is seen as early as infancy.²¹ The traditionally held view that literacy development was something children came to when they reached a level of readiness²² has altered, accepting instead that children develop literacy skills from infancy through social experiences 'that lay the basis for later reading and writing'.²³ 'Those experiences are often acquired through play'.²⁴ Infants' babble is described as the beginnings of both language development and play.²⁵ It is viewed as play as it is an 'intrinsically motivated and freely chosen activity lacking external goals, and it appears... to afford the child a good deal of pleasure'.²⁶ The activity of playing with sound is seen past infancy in older children who 'become fascinated with songs, chants, and rhymes and enjoy producing nonsensical rhyming patterns'.²⁷ Cognitive benefits of sound play were emphasised by Athey, who evidenced a correlation between children's ability to rhyme and early reading achievement.²⁸

Symbolic or make-believe play greatly enhances literacy development.²⁹ Hewes claims that research findings are consistent in demonstrating a close

²⁰ Brown (n13) 40

²¹ F Hughes, *Children, Play, and Development* (4th Ed. Sage, 2010) 226, referencing S DeZutter, 'Play as group improvisation: A social semiotic, multimodal perspective on play and literacy', in O Saracho and B Spodek, (eds.) *Contemporary perspectives on social learning in early childhood education*, (IAP, 2007) 217-242

²² G Whitehurst and C Lonigan, 'Emergent Literacy: Development from Prereaders to Readers', in S Neuman and D Dickinson (eds) *Handbook of Early Literacy Research*, (Vol 1, Guilford Press, 2003) 12

²³ Hughes (n21) 226

²⁴ Ibid

²⁵ G Cook, *Language play, Language learning*, (OUP, 2000) 103

²⁶ Hughes (n21) 226

²⁷ Ibid

²⁸ I Athey, 'Contributions of play to development', in T Yawkey and A Pellegrini (eds), *Child's play: Developmental and applied* (Erlbaum, 1984) 18

²⁹ Interchangeably referred to as pretend play, drama-based play and dramatic play

relationship between symbolic play and literacy development, describing symbolic play as 'a positive influence on literacy development'.³⁰ There are several aspects of pretend play that relate to literacy development. First, the ability to move beyond immediate space and time; in play a child may pretend to feed a soft toy or tell a playmate to go to a location not immediately present such as the beach. This relates to literacy as reading requires the reader to move beyond the present.³¹ Another aspect is the 'ability to move back and forth between multiple frames of reference', seen in pretend-play when children move between make-belief roles (e.g. as pirates), and roles as children engaging with the adults around them.³² A third aspect is the ability to create and understand a story schema, the structuring of pretend play and the way make-belief activities play-out help children understand cause and effect, and the structuring of stories.³³ This ability to use narrative structure is an important literacy skill.³⁴

Recreation of stories through dramatic play significantly affects a child's ability to derive meaning from a story, remember details, understand the story, and improve vocabulary.³⁵ Recreation of stories through dramatic play and 'Book Acting' improves children's grammatical constructs as they learn and mimic new phrases, and develops their ability to infer characters' emotions and actions.³⁶ The ability to recall details after engaging in pretend

³⁰ Hewes (n5) 4, referencing K Roskos and J Christie, (eds) *Play and Literacy in Early Childhood: Research from multiple perspectives*, (Erlbaum, 2000)

³¹ DeZutter (n21)

³² Hughes (n21) 227

³³ DeZutter (n21) 222

³⁴ D Bergen, 'The Role of Pretend Play in Children's Cognitive Development' [2002] 4 *ECRP* <<http://ecrp.uiuc.edu/v4n1/bergen.html>> accessed October 2016

³⁵ DeZutter (n21); A Pellegrini and L Galda, 'Cognitive development, play, and literacy: Issues of definition and developmental function', in K Roskos and J Christie (eds.) *Play and literacy in early childhood: Research from multiple perspectives* (Erlbaum, 2000); P Williamson and S Silvern, 'Thematic-fantasy play and story comprehension', in J Christie (ed.), *Play and early literacy development* (SUNY, 1991)

³⁶ L McGee, 'Book acting: Storytelling and drama in the early childhood classroom', in D Barone and L Morrow, (eds) *Literacy and young children: research-based practices* (Guildford Press, 2003)

play enactment was measured by Kim who found that children who had engaged in pretend play gained better narrative recall both immediately after play and at a later point when prompted with stimuli.³⁷

2.2. Mathematics

The relationship between play and mathematical concepts has been studied extensively. Play has been shown to significantly improve mathematical learning. One way in which the relationship between play and mathematical concepts has been explored is through examining children's play tools such as blocks and water. Schwartz advises that children's use of blocks as 'arbitrary measures' assists in the development and understanding of measurement concepts and principles.³⁸ Hughes describes how children learn the mathematical concept of equivalency through recognising 'that space can be divided into different size units and that a certain number of units of one size corresponds to a different number of units of another'.³⁹ Others demonstrate that children learn spatial capacity and spatial visualisation and mental rotation through block play,⁴⁰ discovering that some things are larger than others and that this has an effect on what can go together. Through constructing with blocks, children gain understanding of two- and three-dimensional space and the concepts of area and volume.⁴¹ Block play positively affects children's ability to sort and classify (e.g. by colour, size, shape or weight), basic principles for developing scientific

³⁷ S Kim, 'The effects of storytelling and pretend play on cognitive processes, short-term and long-term narrative recall' [1999] 29 *ChildStudyJ* 175

³⁸ S Schwartz, *Teaching young children mathematics* (Praeger, 2005) 86-88

³⁹ Hughes (n21) 217

⁴⁰ B Casey et al., 'The power of block building' [2003] 10 *TCM* 98; and B Casey et al., 'The development of spatial skills through interventions involving block building activities' [2008] 26 *CognInstr* 269; For definitions of these concepts, Hughes (n21) 218

⁴¹ Hughes (n21) 218, referencing J Kersh, B Casey and JM Young, 'Research on spatial skills and block building in girls and boys: The relationship to later mathematics learning', in O Saracho and B Spodek (eds.) *Contemporary perspectives on mathematics in early childhood education* (IAP, 2008)

understanding.⁴² Wolfgang, Stannard and Jones discovered positive relationships between pre-school block play and high-school mathematical achievement.⁴³ Likewise, Trawick-Smith et al. evidenced an association between complexity in block play and mathematic learning.⁴⁴

Similar conclusions have been made about the relationship between water play and mathematical concepts. Water play occurs later in childhood development, offering children opportunity 'enhance their ability to use principles of measurement'⁴⁵ by exploring with different media. They can pour water from one shape to another, learning how much water can fit in each container, how shapes differ in size, and concepts of volume. Children engaging in water play develop understanding of conservation of liquid, 'an understanding of quantity in a fluid medium'.⁴⁶

Studies relating to adolescents' play and mathematics development have found that activities such as skateboarding can contribute to the acquisition of mathematical understanding, including algebra and geometry.⁴⁷ This occurs from an initial place of play; children do not go to the water-table, playing blocks or skatepark armed with mathematical or scientific questions. The development of mathematical understanding is thus a useful by-product of play.

⁴² A Rogers and S Russo, S., 'Blocks: A commonly encountered play activity in the early years, or a key to facilitating skills in science, maths and technology?' [2003] 19 *Invest: AustPrimJuniorSciJ* 17, 17-18; Hughes (n21) 220

⁴³ C Wolfgang, L Stannard and I Jones, 'Block play performance among pre-schoolers as a predictor of later school achievement in mathematics' [2001] 15 *JEarlyChildRes* 173, 177-178

⁴⁴ J Trawick-Smith et al., 'Block play and mathematics learning in preschool: The effects of building complexity, peer and teacher interactions in the block area, and replica play materials' [2016] 15 *JEarlyChildRes* 433

⁴⁵ Hughes (n21) 222

⁴⁶ Ibid 223, referencing J Piaget, 'Piaget's Theory', in L Carmichael (ed.), *Carmichael's Manual of Child Psychology* (Wiley, 1970) 715-716

⁴⁷ W Robertson, R Meyer and T Wilkerson, 'The Mathematics of Skateboarding: A Relevant Application of the 5Es of Constructivism' [2012] 1 *JEduLearn* 32; W Robertson 'The Skatepark Mathematics Extravaganza' [2015] 5 *US-China EduRev* 314; W Robertson 'The Masters of Physics: Critical Thinking Through Skateboarding' [2019] 6 *AdvSocSciResJ* 323

2.3. Problem-solving

As children play, they engage with spatial problems (which blocks fit, what items float, how far is it safe to jump) and enhance their ability to problem solve through developing logical thinking.⁴⁸ They gain a greater level of awareness through comparison and develop 'reversibility in their thinking, a critical underlying element in logical reasoning'.⁴⁹ Both object⁵⁰ and pretend play⁵¹ can facilitate the development of problem-solving skills. Pretend play is arguably the most effective play for development of divergent problem-solving skills.⁵² It is clear that 'playful activity can provide children with an opportunity to organise their experiences and exercise their cognitive abilities in a manner that is likely to facilitate imaginative adaptations to future situations',⁵³ particularly useful for problem-solving.

Problem-solving can be broken down into two categories: convergent and divergent. Divergent problem-solving is linked to creativity and requires the ability to "think outside the box", approach a problem with multiple solutions, and be unconventional, 'as there is no one correct solution'.⁵⁴ Convergent problem-solving requires the ability to gather multiple pieces of information to arrive at the one correct solution. This process 'requires logic, speed, and accuracy' and relies upon previous information and problem-solving experiences.⁵⁵

⁴⁸ Hughes (n21) 221-2

⁴⁹ Ibid

⁵⁰ J Dansky and I Silverman, 'Play: A General Facilitator of Associative Fluency' [1975] 11 *DevPsychol* 104

⁵¹ J Dansky, 'Make-Believe: A mediator of the relationship between play and associative fluency' [1980] 51 *ChildDev* 576; O Saracho, 'Young children's creativity and pretend play' [2002] 172 *EarlyChildDevCare* 431

⁵² S Wyver and S Spence, 'Play and Divergent Problem Solving: Evidence supporting a reciprocal relationship' [1999] 10 *EarlyEducDev* 419; E Fisher, 'The Impact of Play on Development: A Meta-Analysis' [1992] 5 *PlayCult* 159; Dansky (n51) 576-579

⁵³ Dansky and Silverman (n50) 104

⁵⁴ Hughes (n21) 230

⁵⁵ Ibid

Dansky found that children who engaged in make-believe play performed significantly better at divergent problem-solving than those who did not: 'the observed relationship between play opportunities and enhanced fluency depended specifically on the occurrence of make-believe'.⁵⁶ He argues that this supports Piaget's claim that symbolic play is a source of creative imagination,⁵⁷ and contends that the cognitive processes engaged in during symbolic play, including free and mutual assimilation of objects and ideas, are important for problem-solving.⁵⁸

Pepler and Ross examined the relationship between types of play and the development of problem-solving skills. Children who engaged in convergent play with convergent materials (e.g. puzzles) engaged in problem-solving at a convergent level with strategy-based moves, whereas those who engaged in divergent play with divergent materials engaged in problem-solving at a divergent level with a wide variety of activities.⁵⁹ Wyver and Spence show that the relationship between play and problem-solving is reciprocal, with problem-solving skills enhancing the ability to play,⁶⁰ subsequently influencing other aspects of development supported through play.

Effects of children's play on problem-solving impacts into adulthood. The California Institute of Technology's Jet Propulsion Laboratory (JPL) has been ground-breaking in its impact on space exploration and science. However, anecdotal evidence shows that at the beginning of the new century, with the retirement of many of the scientists and engineers hired in the 1960s, JPL struggled to find adequate replacements despite recruiting top graduates.⁶¹

⁵⁶ Dansky (n51) 578-9

⁵⁷ Ibid 579, referencing J Piaget, *Play, dreams and imitation in childhood* (Norton, 1951) 155

⁵⁸ Ibid 579

⁵⁹ D Pepler and H Ross, 'The Effects of Play on Convergent and Divergent Problem Solving' [1981] 52 *ChildDev* 1209, 1209-1210

⁶⁰ Wyver and Spence (n52) 441

⁶¹ Brown (n13) 9-10

New employees were seen as 'missing something' – the ability to problem-solve.⁶² Following investigation, they discovered that retiring employees, as children, 'had taken apart clocks to see how they worked, or made soapbox derby races, or built hi-fi stereos, or fixed appliances'.⁶³ They had 'played with their hands as they were growing up'.⁶⁴ JPL observed that this childhood experience of play enabled their employees to problem solve in innovative ways that led to ground-breaking solutions. JPL subsequently adapted their interview process to include questions on childhood play.⁶⁵ Such evidence highlights the importance of play in childhood: 'What might seem like a frivolous or even childish pursuit is ultimately beneficial. It's paradoxical that a little bit of "non-productive" activity can make one enormously more productive and invigorated in other aspects of life'.⁶⁶

2.4. Creativity

Creativity is linked to problem-solving as both involve divergent thinking.⁶⁷ Creativity requires an openness to new ideas⁶⁸ and an ability to think outside the box.⁶⁹ The primary principle behind creativity is novelty.⁷⁰ This may be through generating *novel* ideas or implementing existing ideas in *novel* ways or *novel* situations.⁷¹ Creativity is both a personality characteristic, involving

⁶² Ibid 10

⁶³ Ibid 11

⁶⁴ Ibid 10

⁶⁵ Ibid 11

⁶⁶ Ibid

⁶⁷ J Guilford, 'Structure of intellect' [1956] 53 *PsycholBull* 267; E Nusbaum and P Silvia, 'Are intelligence and creativity really so different? Fluid intelligence, executive processes, and strategy use in divergent thinking' [2011] 39 *Intelligence* 36, 36-37; M Basadur et al., 'Individual Problem-Solving Styles and Attitudes Toward Divergent Thinking Before and After Training' [1990] 3 *CreatResJ* 22, 23-24

⁶⁸ M Runco, *Problem Finding, Problem Solving and Creativity* (Ablex Publishing, 1994)

⁶⁹ V Glaveanu, *Distributed Creativity: Thinking Outside the Box of the Creative Individual* (Springer, 2014) 7

⁷⁰ Bateson and Martin (n10) 55; R Weisberg, *Creativity: Beyond the Myth of Genius* (W.H.Freeman, 1993) 4

⁷¹ This is different to innovation which is 'implementing a novel form of behaviour or an idea in order to obtain a practical benefit which is adopted by others', or alternatively put 'innovation is new stuff that is made useful'. Bateson and Martin (n10) 3 and 55; and M McKeown, *The truth about innovation* (Prentice-Hall, 2008) 2

mental flexibility, spontaneity, curiosity and persistence, and an intellectual process involving 'a tendency to form unusual associations, to relax conscious thought... to analogies and metaphors in reasoning, to form rich visual images, and to ask original questions'.⁷² It involves moving beyond basic evident information, learning from past experiences and utilising non-traditional approaches to produce something novel.⁷³ Torrance identified creativity as having three main components:⁷⁴ *fluency*- the 'number of relevant responses' given in answer to how many different uses for an object;⁷⁵ *flexibility*- the 'variety of categories of responses', i.e. taking ideas from several different sources as opposed to staying within one category;⁷⁶ and *originality*- 'the novelty of the ideas generated and the individual's lack of reliance on routine or habitual thought'⁷⁷.

The relationship between play and creativity is visible in the animal kingdom and in humans. Bartholomew stated that 'creativity often appears to be some complex function of play... related to the exuberant behaviour of young animals. The most profoundly creative humans of course never lose this exuberant creativity'.⁷⁸ Bateson and Martin explore a plethora of creative people from Mozart to Picasso, Escher to Fleming, highlighting their playful approaches to work.⁷⁹ Play and creativity have the potential to offer great additions to life through scientific discoveries and artistic contributions. Play is not simply something that enhances the experience of childhood, rather

⁷² Hughes (n21) 229, referencing F Barron and D Harrington, 'Creativity, Intelligence, and Personality' [1981] 32 *AnnuRevPsychol* 439

⁷³ Ibid 229, referencing B Duffy, *Supporting Creativity and Imagination in the Early Years*, (OUP, 1998); C Mindham, 'Creativity and the young child' [2005] 25 *Early Years* 81

⁷⁴ P Torrance, 'Predictive validity of Torrance tests of creative thinking' [1972] 6 *JCreatBehav* 236

⁷⁵ Ibid 245

⁷⁶ Ibid

⁷⁷ Bateson and Martin (n10) 55-6

⁷⁸ G Bartholomew, 'Scientific Innovation and creativity: a zoologist's point of view' [1982] 22 *AmZool* 227, 228

⁷⁹ Bateson and Martin (n10) 58

play experiences in childhood affect creativity and work later in life.⁸⁰ Creative processes developed through children's play are revisited by adults when tackling problems or devising novel ideas or concepts: 'Play is a window on the beginnings of the creative process'.⁸¹

Play involves development of early cognitive and affective processes imperative for creativity.⁸² It offers this development through enhancing positive and light-hearted moods that foster original and divergent thinking through playfulness, freedom and reductions in stress.⁸³ This environment allows children to display spontaneity and curiosity and to explore creatively.⁸⁴ The form of play most readily associated with creativity is make-believe play due to the intellectual flexibility required as children use symbolism, adapt to new ideas and directions of play, and transform objects and situations into alternatives whilst still understanding their original identities.⁸⁵

Creativity is not limited to make-believe play. As seen with problem-solving, children make use of divergent thinking as they interact with different items and circumstances. An environment rich in play materials and choice regarding their use therefore has a profound effect on children's divergent thinking and creativity.⁸⁶ Torrance has shown that children who play more

⁸⁰ M Root-Bernstein and R Root-Bernstein, 'Imaginary wordplay in childhood and maturity and its impact on adult creativity' [2006] 18 *CreatResJ* 405 (study on McArthur Fellows); Brown (n13) (Caltech's JPL anecdote, outlined above)

⁸¹ S Russ, 'Play, affect, and creativity: Theory and Research', in S Russ (ed) *Affect, creative experience and psychological adjustment* (Bruner/Mazel, 1999) 57; Vygotsky (n4)

⁸² Russ (n81) 57

⁸³ Bateson and Martin (n10); S Lyubomirsky et al., 'The benefits of frequent positive affect: does happiness lead to success?' [2005] 139 *PsycholBull* 1

⁸⁴ N Lieberman, *Playfulness: its relationship to imagination and creativity* (AP, 1977)

⁸⁵ G Fein, 'Pretend Play: Creativity and Consciousness', in G Dietmar et al., (eds) *Curiosity, imagination, and play: On the development of spontaneous cognitive motivational processes* (Erlbaum, 1987); Hughes (n21) 231-232; Russ (n81); A Lillard et al., 'Pretend Play and Cognitive Development', in G Usha (ed.) *Blackwell Handbooks of Development Psychology: Wiley-Blackwell Handbook of Childhood Cognitive Development* (2nd ed., Wiley-Blackwell, 2010) 285

⁸⁶ Hughes (n21) 231; Saracho (n51)

demonstrate more creativity, measured in terms of originality and fluency, than children who play less.⁸⁷ Garaigordobil, assessing children's creativity levels after a year-long play program, found significantly increased creativity for children involved in creative play sessions.⁸⁸

3. Social Development

Play assists in social development through learning to play with others, and making sense of the world and social roles. Christie and Johnsen outline three areas of children's changing conceptualisations of the social perspective of others: '1. Visual or perceptual perspective taking: How does another person see the world? 2. Cognitive perspective taking: What are other people thinking? What are other people like? 3. Affective perspective taking: What kind of emotional experiences is another person having? This is frequently referred to as empathy'.⁸⁹ When children play, they engage with peers and adults around them, facilitating growth in social understanding.

During play, children learn negotiation skills, conflict resolution, sharing skills, self-control, autonomy and discover how to 'facilitate social integration'.⁹⁰ Research shows that play does not simply reflect social competence, but promotes it.⁹¹ Social skills developed through play are vital for social interaction and social competence throughout childhood and into adulthood. This process begins as children and infants interact with their

⁸⁷ P Torrance, 'Priming creative thinking in the primary grades' [1961] 62 *ElemSchJ* 34

⁸⁸ M Garaigordobil, 'Intervention in creativity with children aged 10 and 11 years: impact of a play program on verbal and graphic-figural creativity' [2006] 18 *CreatResJ* 329, 341

⁸⁹ J Christie and E Johnsen, 'The role of play in social-intellectual development' [1983] 53 *RevEducRes* 93, 106, referencing C Shantz, 'The development of social cognition', in E Hetherington (ed) *Review of Child Development Research* (Vol.5, UCP, 1975) 277

⁹⁰ David (n3) para.55; Hodgkin and Newell (n3) 472

⁹¹ G Creasey et al., 'Play and Social Competence', in O Saracho and B Spodek (eds) *Multiple Perspectives on Play in Early Childhood Education* (SUNY, 1998)

parents and develops as they grow older and interact increasingly with peers and other adults.⁹²

Early play with parents through, for example, games of peekaboo teach children basic social skills such as reciprocity.⁹³ Vygotsky views this parent-child interaction as providing scaffolding, or a 'zone of proximal development', for children's play and social behaviour.⁹⁴ Parent-child play assists social development by enabling children to gain experience in dominance and success, and to build self-confidence.⁹⁵ Play with parents involves more elaborate themes and mature play than when playing alone, suggesting that parents support play through 'modelling, bolstering social-linguistic skills, suggesting novel ways to play with toys, and encouraging sophisticated pretend over functional play'.⁹⁶ Another way in which parents facilitate social development is by enabling peer-play activities through arranging "play-dates", showing children how to interact with peers and 'encouraging them to be good "hosts" who are concerned about their playmates' needs'.⁹⁷ Social skills learnt through parent-child play are subsequently built upon during child peer-play.

⁹² W Haight and P Miller, *Pretending at home: Early development in a sociocultural context* (SUNY, 1993); R Parke et al., 'The role of family in the development of peer relationships', in R Pteres and J McMahon (eds.), *Social Learning Systems Approaches to Marriage and Family*, (Brunner, 1988); W Hartup and Z Rubin, *Relationships and development* (Erlbaum, 1986)

⁹³ Creasey et al. (n91) 122

⁹⁴ Vygotsky (n4) 16; L Vygotsky, 'The role of play in development', in M Cole et al., (eds) *Mind in Society*, Cambridge (HUP, 1978); A Stone, 'What is missing in the metaphor of scaffolding?', in D Faulkner et al., (eds) *Learning relationships in the classroom* (2nd ed, Routledge, 2013) 157

⁹⁵ M Bibien and S Suomi, 'Lessons from primate play', in K MacDonald (ed.) *Parent-Child Play: Descriptions and Implications* (SUNY, 1993) 188

⁹⁶ Creasey et al. (n91) 124; J Dunn and C Wooding, 'Play in the home and its implications for learning', in B Tizard and D Harvey (eds.) *Biology of Play* (Heinemann, 1977); B Fiese, 'Playful relationships: a contextual analysis of mother-toddler interaction and symbolic play' [1990] 61 *ChildDev* 1648; B O'Connell and I Bretherton, 'Toddlers' play alone and with mother: the role of maternal guidance', in I Bretherton (ed) *Symbolic Play* (AP, 1984)

⁹⁷ Creasey et al. (n91) 125; G Ladd and C Hart, 'Creating informal play opportunities: Are parents; and pre-schoolers' initiations related to children's competence with peers?' [1992] 28 *DevPsychol* 1179

For children to have a good play experience, they must engage and communicate with others to explain goals, roles, emotions, and rules. This does not tend to occur by simply outlining these at the beginning of play, rather it is communicated throughout and through many different media. Successful peer-play involves 'coordination', 'co-elaboration' and 'clarification of meaning' throughout to build upon contributions and continue to expand and explore play.⁹⁸ A study of classroom play observed collaboration and flexibility of ideas and found that children's cooperation led to high-quality play involving multiple levels and aspects.⁹⁹ Sawyer observed the improvisational nature of such collaboration when studying preschool children, finding that 'implicit, in-frame play strategies were more successful than explicit, out-of-frame strategies'.¹⁰⁰ A play scenario witnessed by Gearhart saw 3-year-olds 'playing shop' adapt play scripts to allow for others' plans which in turn led to more sophisticated play.¹⁰¹

Not only does this behaviour require the development of social skills, it involves 'cognitive stretches'¹⁰² further enhancing children's cognitive development. Improvisation and flexibility are also seen when children face disagreements. Piaget saw these scenarios as jarring 'children into noticing that people can hold perspectives different from their own and that intentions rather than objective consequences underlie behaviour and are the appropriate basis for judging people's actions'.¹⁰³ These situations

⁹⁸ B Rogoff, 'Cognition as a Collaborative Process', in W Damon (ed) *Handbook of Child Psychology: Cognition, Perception, and Language* (5th ed, Vol.2, Wiley, 1998) 710; M Verba, 'Cooperative formats in pretend play among young children' [1993] 11 *CognInstr* 265

⁹⁹ J Baker-Sennett, E Matusov, and B Rogoff, 'Sociocultural processes of creative planning in children's playcrafting', in P Light and G Butterworth (eds) *Context and Cognition: Ways of Learning and Knowing* (Harvester Wheatsheaf, 1992) 95, 111-112

¹⁰⁰ Bergen (n34), referencing K Sawyer, *Pretend play as an improvisation: Conversation in the preschool classroom* (Erlbaum, 1992)

¹⁰¹ M Gearhart, 'Social Planning: Role play in a novel situation', (Paper presented at the meetings of the Society for Research in Child Development, 1979) as cited in Rogoff (n98)

¹⁰² Rogoff (n98) 710

¹⁰³ Creasey et al. (n91) 122; J Piaget, *The language and thought of the child* (Harcourt, Brace and World, 1926)

require children to handle conflict, de-escalate feelings and resolve disagreement, further improving social competency.¹⁰⁴ It is evident, therefore, that through engaging in play, children learn to develop social skills of coordination, improvisation, collaboration and flexibility, vital skills for positive social interaction.

Play enables children to make sense of the world around them, and the different social roles therein.¹⁰⁵ This is particularly so with make-believe and role play, where children create a 'Twin Earth',¹⁰⁶ acting out familiar situations and roles whilst gaining a better understanding of scripts of life (e.g. adult roles, or the child's relationship to others). In such play children separate themselves from everyday constraints of time and space and meaning, to test 'the meanings and rules of serious life', and gain greater understanding of the relationships they engage in.¹⁰⁷ Through play they make sense of the situations they find themselves in,¹⁰⁸ and 'integrate accepted social norms into their personalities', promoting social competence.¹⁰⁹

One example of children testing rules and scripts found in social interactions was witnessed by Packer when observing a group of children.¹¹⁰ Through play the children both developed understanding of given social structures and adapted and tested social order.¹¹¹ This study evidences the significant role of play in helping children understand the world and social scenarios

¹⁰⁴ J Gottman, 'How children make friends' [1983] 48 *Monogr SRCD* 44, 50-51 and 74

¹⁰⁵ This is understood as 'psychoanalytic theory'. S Freud, 'Creative writers and daydreaming', in J Strachey (ed) *The standard edition of the complete psychological works of Sigmund Freud* (Vol IX, Hogarth, 1959); E Erikson, *Childhood and Society* (Norton, 1950)

¹⁰⁶ A Lillard, 'Pretend play as twin earth: A social-cognitive analysis' [2001] 21 *DevRev* 495

¹⁰⁷ Rogoff (n98) 709

¹⁰⁸ Hewes (n5) 4

¹⁰⁹ Creasey et al. (n91) 122; Erikson (n105)

¹¹⁰ M Packer, 'Cultural Work on the Kindergarten Playground: Articulating the Ground of Play', [1994] 37 *HumDev* 259, 273-275

¹¹¹ *Ibid*

they find themselves in, test social norms and experiment with social convention. Active manipulation of the world through play enables children to understand the social world in a deeper way than if play simply consisted of 'recreations or recapitulations of observed phenomena'.¹¹² Children playing make-believe classrooms may choose to test novel behaviour by acting up towards the teacher to safely assess potential responses to such behaviour, instead of simply practising established skills.¹¹³ Free play with conventional rules and structures is thought to be unique to peer interaction, showing the need for children to be able to engage in pretend play with other children.¹¹⁴ Play is thus crucial as it permits children to develop and test responses to a variety of situations, free of serious consequence.¹¹⁵

Pellegrini, and Pellegrini and Smith studied the value of rough-and-tumble peer play for social development.¹¹⁶ Pellegrini studied elementary-school children's rough-and-tumble play, assessing social competence and social acceptance.¹¹⁷ Rough-and-tumble play had a positive relationship to 'popular children's social competence' as rough-and-tumble play involves social skills essential for successful social interaction such as reciprocal role-taking, empathy, innovation and social flexibility, positively correlating with social problem solving.¹¹⁸ Rough-and-tumble play facilitates and encourages

¹¹² D Forbes, M Katz, and B Paul, "'Frame Talk": A dramatic analysis of children's fantasy play', in EC Mueller and CR Cooper (eds.) *Process and Outcome in Peer Relationships* (AP: 1986) 262

¹¹³ Rogoff (n98) 710

¹¹⁴ K Sylva, J Bruner and P Genova, 'The role of play in the problem-solving of children 3-5 years old', in J Bruner et al., (eds) *Play: Its role in development and evolution* (Penguin Books, 1976)

¹¹⁵ S Lester and W Russell, 'Children's right to play: An examination of the importance of play in the lives of children worldwide' Working Paper No.57, *Early Childhood Development* (Bernard van Leer Foundation, 2010) 20; D Lancy, 'Play in species adaptation' [1980] 9 *AnnuRevAnthropol* 471; P Vandenberg, 'Play, problem-solving, and creativity' [1980] 9 *NDCAD* 49

¹¹⁶ A Pellegrini, 'Elementary-school children's rough-and-tumble play and social competence', [1988] 24 *DevPsychol* 802; A Pellegrini and P Smith, 'Physical Activity Play: The Nature and Function of a Neglected Aspect of Play' [1998] 69 *ChildDev* 577

¹¹⁷ Pellegrini (n116) 802-803; R Fagen, *Animal Play Behaviour* (OUP, 1981); R Fagen, 'Play and behavioural flexibility', in P Smith (ed) *Play in Animals and Humans* (Blackwell, 1984)

¹¹⁸ Pellegrini (n116) 802-5

children to develop the ability to encode and decode social signals, and develop affective perspective-taking or empathy, and significant challenges arise without this.¹¹⁹ The importance of these skills is compounded when considering the substantial research that indicates children who lack social skills are 'at increased risk for serious adjustment problems' later in life.¹²⁰ Studies indicate that children with early levels of social withdrawal show 'peer rejection, social anxiety, loneliness, depression, and negative self-esteem in later childhood and adolescence, as well as having negative implications for academic success'.¹²¹

The role of play in assisting children's social development is evident in research into encouraging social interaction in children who have shown a lack of social skills. Buell et al. conducted a study with a 3yr old preschool girl who had evidenced deficits in motor and social repertoires.¹²² The study saw teachers reinforce play behaviours with outdoor play equipment, gradually reducing reinforcement as social interaction increased. It was believed that if Polly increased her use of outdoor play equipment, she would naturally 'be thrown into a steady variety of interactions with her peers', and that this would improve her behavioural repertoire.¹²³ The study found that Polly's baby-like behaviour steadily decreased throughout the study and was replaced with social interaction including 'touching or verbalising to other children, using their names, and engaging in cooperative play'.¹²⁴ This study supports a history of play training studies that demonstrate improvements

¹¹⁹ Pellegrini and Smith (n116) 588-589; A Costabile et al., 'Cross-national comparison of how children distinguish serious and playful fighting' [1991] 27 *DevPsychol* 881; Christie and Johnsen (n89) 106

¹²⁰ Creasey et al. (n91) 116-7

¹²¹ Bergen (n34); K Rubin and R Coplan, 'Social and non-social play in childhood: An individual differences perspective', in O Saracho and B Spodek (eds.) *Multiple Perspectives on Play in early childhood* (SUNY, 1998)

¹²² Buell (n4) 168

¹²³ Ibid

¹²⁴ Ibid 172

in social skills such as perspective-taking, social problem-solving and group cooperation.¹²⁵

4. Emotional Development

Emotional development in children has the goal of reaching a good level of emotional intelligence. This refers to the ability to recognise and perceive the meanings of emotions and their relationships, to assimilate emotion-related feelings, to understand the information related to emotions, to manage them and reason and problem-solve on the basis of them.¹²⁶ It is shown in the way in which individuals make inferences about their own and others' feelings, and reflect or act upon them.¹²⁷ There are three different categories of emotional intelligence: '(a) children's ability to recall and describe personal emotional experiences, (b) children's ability to identify emotions in themselves [and then regulate them], and (c) children's ability to identify [and respond to] emotions in other people'.¹²⁸

Development of emotional intelligence begins with the process of identifying emotions in ourselves. This requires 'interpreting both external situational and bodily cues as well as information about internal experiences'.¹²⁹ Play is an important platform for children to learn to identify their feelings. Play, whether with others or alone, provides space for children to engage

¹²⁵ C Rosen, 'The effects of sociodramatic play on problem-solving behaviour among culturally disadvantaged preschool children' [1974] 45 *ChildDev* 920; E Saltz and J Johnson, 'Training for thematic-fantasy play in culturally disadvantaged children: Preliminary results' [1974] 66 *JEduPsychol* 623; P Smith and S Syddall, 'Play and non-play tutoring in preschool children: Is it play or tutoring that matters?' [1978] 48 *BrJEducPsychol* 315; Rubin K, Fein G and Vandenberg B, 'Play' in E.M. Hetherington (ed.) *Handbook of Child Psychology: Vol 4. Socialisation, Personality and Social Development* (Wiley, 1984)

¹²⁶ J Mayer, D Caruso and P Salovey, 'Emotional Intelligence Meets Traditional Standards for an Intelligence' [2000] 27 *Intelligence* 267; J Mayer and P Salovey, 'What is emotional intelligence?', in P Salovey and D Sluyter (eds) *Emotional development and emotional intelligence: Educational implications* (Harper Collins, 1997)

¹²⁷ A Seja and S Russ, 'Children's fantasy play and emotional understanding' [1999] 28 *JClinChildPsychol* 269, referencing E Nannis 'Cognitive-developmental differences in emotional understanding', in E Nannis and P Cowan (eds) *New directions for ChildDevelopment: Number 39. Developmental psychopathology and its treatment* (Jossey-Bass, 1988)

¹²⁸ Ibid 269

¹²⁹ Ibid 269-270

emotionally with stimuli repeatedly. Children feel happiness and disappointment when succeeding or struggling in play (e.g. catching or dropping a ball). Repeated experience with emotions leads to increased development of a child's ability to identify them and gain familiarity with emotions.¹³⁰ If a child feels sad that they have lost a ball, they need to interpret the missing ball, their slumped shoulders, and internal feelings such as a desire to cry all as equating to sadness. If a child feels happy that they have succeeded at a task, they must interpret the completed task, their smile, positive body language, and internal feelings of joy and success all as equating to happiness. These two emotions are relatively simple to comprehend, however feelings of frustration, anger, elation, confusion or rejection are much more complicated and require higher levels of emotional intelligence to understand.¹³¹ Play offers this opportunity to experience and identify a wide variety of emotions, e.g. frustration that a game has not gone to plan, anxiety that others may not want to engage, hope that they win, elation in success, or rejection if others refuse to play.

Following identification of emotions in themselves, children must learn how to regulate and respond to their emotions. Thompson defines emotional regulation as 'the extrinsic and intrinsic processes responsible for monitoring, evaluating, and modifying emotional reactions, especially their intensive and temporal features, to accomplish one's goals'.¹³² The importance of developing the ability to regulate emotions is highlighted through the association of deficits in emotion regulation with behavioural and emotional difficulties, including in school, in peer-peer relationships, and

¹³⁰ Ibid 270

¹³¹ J Mayer and P Salovey, 'Emotional intelligence and the construction and regulation of feelings' [1995] 4 *ApplPrevPsychol* 197, 197-198

¹³² R Thompson, 'Emotion Regulation: A Theme in Search of Definition' [1994] 59 *Monogr SRCD* 25, 27-28

broader social competence.¹³³ Deficits in emotional regulation is associated with internalising behaviour in pre-school aged children and with depression in adolescence.¹³⁴ Emotional regulation is not simple, requiring a diverse skill set,¹³⁵ including 'inhibitory control, working memory and attention', collectively seen as 'executive function'.¹³⁶ Children may find it easier to master some of these skills than others.

Pretend play in particular has been seen to enhance executive function as it involves the balance and control of internal desires and plans in an 'imaginary situation', while the real world must be both inhibited and responded to.¹³⁷ Kraft and Berk found that pretend play is crucial for children's development of self-regulation due to the level and use of 'private speech' to regulate behaviour.¹³⁸ Pretend play is particularly important for emotional regulation due to the number of opportunities offered for regulation in comparison to 'less complex play settings' and task-oriented settings with predetermined goals or adult direction.¹³⁹ As children engage in pretend play, they detach and change meanings from objects and situations, build empathetic skills and simultaneously focus flexibility on multiple events or objects.¹⁴⁰ This develops the ability to think laterally and remove oneself fully from an emotional situation to build flexibility and regulate emotions, important for the continuation of gameplay and development of emotional intelligence.¹⁴¹

¹³³ K Galyer and I Evans, 'Pretend Play and the Development of Emotion Regulation in Preschool Children' [2001] 166 *EarlyChildDevCare* 93

¹³⁴ Ibid

¹³⁵ Ibid 94, 105

¹³⁶ A Lillard et al., 'The Impact of Pretend Play on Children's Development: A Review of the Evidence' [2013] 139 *PsycholBull* 1, 22

¹³⁷ Ibid and Creasey et al. (n91) 123

¹³⁸ K Kraft and E Berk, 'Private speech in two preschools: Significance of open-ended activities and make-believe play for verbal self-regulation' [1998] 13 *EarlyChildResQ* 637

¹³⁹ Bergen (n34)

¹⁴⁰ Christie and Johnsen (n89) 107; J Piaget, 'Piaget's Theory', in L Carmichael (ed.), *Carmichael's Manual of Child Psychology* (Wiley, 1970) 717-719

¹⁴¹ Galyer and Evans (n133) 105

As children engage in play they are faced with emotional *changes*. Development of emotional intelligence enables self-awareness and adaptability to these changes. If a child is aware of a feeling of sadness, they may 'seek out distractions or assistance to change his or her current experience',¹⁴² by choosing to adapt play direction or asking to play with others. Play further assists the development of emotional regulation by providing a context in which emotions must be regulated to guarantee continuation of play, 'thus providing a meaningful and immediate learning experience'.¹⁴³ Play offers a platform for learning empathy, self-awareness and regulation, and flexibility, skills that are vital for social interaction as adults.¹⁴⁴ The development of emotional regulation through play has positive effects on emotional well-being through reducing anxiety, aggression and depression and sleep problems.¹⁴⁵ Furthermore, Burdette and Whitaker found that play can improve children's attention, required for inhibition and impulse control.¹⁴⁶

Galyer and Evans conducted a study with 47 pre-school children aged four-five years.¹⁴⁷ They found that children who engaged in pretend play regularly had higher rates of emotion regulation than those who did not.¹⁴⁸ Similarly, those that demonstrated stronger emotional regulation skills during pretend play also had higher rates of emotional regulation in general, with regular pretend play relating to 'higher frequency of adaptive affect displays, empathy and emotional self-awareness in everyday interactions'.¹⁴⁹ Children

¹⁴² Seja and Russ (n127) 270

¹⁴³ R Hromeck, *Game Time: Games to Promote Social and Emotional Resilience for Children aged 4-14* (Lucky Duck, 2004) 11

¹⁴⁴ H Burdette and R Whitaker, 'Resurrecting Free Play in Young Children: Looking Beyond Fitness and Fatness to Attention, Affiliation, and Affect' [2005] 159 *APAMJ* 46, 48 referencing D Goleman, *Emotional Intelligence* (Bantam Books, 1997)

¹⁴⁵ Ibid

¹⁴⁶ Ibid 47

¹⁴⁷ Galyer and Evans (n133)

¹⁴⁸ Ibid 103

¹⁴⁹ Ibid

who played more frequently were found to be learning both emotional regulation and response flexibility.¹⁵⁰ Successful development of these skills through play has an important correlation with social skills, with children recorded as having less positive social skills also recorded as not engaging in pretend play and having 'below the mean measures of emotion regulation'.¹⁵¹

Related to identifying emotions in the self is the identification of emotions in others. This involves 'discerning situational and expressive cues' and making 'inferences about others' mental states and experiences'.¹⁵² Pretend play is key for developing this aspect of emotional intelligence. It involves a high level of imagination as children role play and adopt different perspectives, and thus requires consideration of others' emotional experiences and perspectives.¹⁵³ Furthermore, 'individual differences in imagination and fantasy' are 'significantly related to measures of affective and cognitive perspective taking..., empathy and role taking..., and social competence'.¹⁵⁴ Unstructured free play involves 'early influences on the developing brain'¹⁵⁵ that result in the establishment of 'neural architecture [that enhances] the integration of systems that support emotion and cognition'.¹⁵⁶

Seja and Russ tested the relationship between the quality of children's fantasy play and their ability to describe their own emotional experiences and understand others' emotions. Children in their study engaged in a standardised play situation for five minutes before being asked questions on

¹⁵⁰ Ibid 104

¹⁵¹ Ibid 106

¹⁵² Seja and Russ (n127) 270

¹⁵³ Ibid 270, 275

¹⁵⁴ Ibid 270

¹⁵⁵ Burdette and Whitaker (n144) 48

¹⁵⁶ Lester and Russell (n115) 20

their understanding of emotions. The quality of children's fantasy play was significantly and positively related to the proportion of appropriate responses describing the child's own emotional experiences and to 'the summary score for developmental level of understanding others' emotions'.¹⁵⁷ They study found that 'children who were able to access and organize their fantasy and emotions in play were more likely to recall and organize memories related to emotional events',¹⁵⁸ evidencing the role of play in the development of children's emotional intelligence.

Additional to identifying and responding to emotions in the self and in others, play supports the development of independence and self-confidence. Free play is important in enabling children to develop a sense of independence as they engage in self-directed play away from adults.¹⁵⁹ It enables children to discover their own identities, providing a space for children to explore, practice independent thought and decision-making, and to nurture individual capabilities and personalities.¹⁶⁰ Success in play, occurring at different stages of child development, provides continual development of self-confidence. A baby may begin to feel self-confidence when they shake a rattle and receive reinforcement through sound, whereas an older child may develop self-confidence through winning at a game or experiencing positive group play. Positive emotional and physical feedback through play serves to enhance and encourage the development of self-worth and self-confidence.¹⁶¹ Dweck and Elliot discovered the importance for children to

¹⁵⁷ Seja and Russ (n127) 272

¹⁵⁸ Ibid 274

¹⁵⁹ R Brockman et al., 'What is the meaning and nature of active play for today's children in the UK?' [2011] 8(15) *IntJ BNPA* 1, 2 referencing KR Ginsburg, 'The importance of play in promoting healthy child development and maintaining strong parent-child bonds' [2007] 119 *Paediatrics* 182; Hewes (n5) 4

¹⁶⁰ Hewes (n5) 4; L Bunker, 'The role of play and motor skill development in building children's self-confidence and self-esteem' [1991] 91 *ESJ* 467, 468

¹⁶¹ Bunker (n160) 469

experience failure for the development of good self-esteem.¹⁶² They found that experiencing failure taught 'children to take responsibility for what they can control and [when] to put forth more effort', to see when different factors affected success, and enabled children appropriately attribute success and failure.¹⁶³ Succeeding in challenging situations thus provides high levels of emotional ratification, going a long way to boost self-confidence and self-worth.¹⁶⁴

5. Physical Development

In addition to cognitive, social and emotional development, play has an crucial role in children's physical development. Simply put, 'a smile on the face of a playing child reflects multiple physiologic processes in the body that can improve health'.¹⁶⁵ The health benefits of physical activity are well known and children engaging in regular physical activity are likely to have 'lower body mass, blood pressure, insulin levels, and improved mental wellbeing'.¹⁶⁶

Attention to the role of *physical activity* in decreasing and preventing childhood obesity has been prominent, with many public health organisations placing growing focus on increasing children's physical activity levels.¹⁶⁷ However, research highlights the crucial role of *play* in tackling

¹⁶² Ibid 470, referencing C Dweck and E Elliot, 'Achievement motivation', in M Hetherington (ed) *Social Development: Carmichael's manual of child psychology* (Wiley, 1984)

¹⁶³ Ibid

¹⁶⁴ Ibid

¹⁶⁵ Burdette and Whittaker (n139) 48

¹⁶⁶ Brockman et al (n159) 1, referencing: AR Ness et al., 'Objectively measures physical activity and fat mass in a large cohort of children' [2007] 4 *PLoS Med* e97; SD Leary et al., 'Physical activity and blood pressure in childhood: findings from a population-based study', [2008] 51 *Hypertension*, 92; R Jago, 'Six-year change in youth physical activity and effect on fasting insulin and HOMA-IR' [2008] 35 *AmJPrevMed* 554; DL Schmalz, 'A longitudinal assessment of the link between physical activity and self-esteem in early adolescent non-Hispanic females [2007] 41 *JAdolescHealth* 559; A Steptoe et al., 'Sports participation and emotional wellbeing in adolescents' [1996] 347(9018) *Lancet* 1789

¹⁶⁷ S Alexander et al., 'Active play may be lots of fun, but it's certainly not frivolous': the emergence of active play as a health practice in Canadian public health' [2014] 36 *SHI* 1188, 1189; Brockman et al. (n159); I Janssen, 'Active Play as a Strategy for Preventing Childhood Obesity: 4th National Obesity Summit' [2015] 39 *CanJ Diabetes* s6; I Janssen, 'Active play: An

obesity, as opposed to simply engaging in physical activity. Janssen has conducted extensive research into this issue. His research shows that physical activity interventions have a minimal effect on children's daily total physical activity (~4 minutes more walking or running per day) and no effect on body mass index.¹⁶⁸ The main reason for this is that physical activity interventions comprised of structured and adult-led physical activity programs, such as organised sport and school physical education lessons.¹⁶⁹ Such interventions do not succeed in addressing childhood obesity as they result in low intensity levels of physical activity. For example, 'only 12% of a physical education class taught by a regular teacher [is] spent in moderate-to-vigorous [physical activity]'.¹⁷⁰

Children engaging in active play move 'at a light, moderate, or vigorous intensity' for about 50% of the time.¹⁷¹ Active play is unstructured, child led, and often occurs for extended periods of time, thus having a substantial impact on energy and caloric expenditure.¹⁷² It involves games and activities such as playground games, ball games played in the street,¹⁷³ pretend play, and natural play. As children develop and age, the duration and intensity of active play adapts to their needs, interests, and physical development.¹⁷⁴ As pre-schoolers engage in play they exhibit 'brief bouts of varied activities with frequent rest periods', 'more spontaneity and [show] less interest in sustaining a single activity'.¹⁷⁵ This reflects the demands of the developing

important physical activity strategy in the fight against childhood obesity' [2014] 105 *CanJ PublicHealth* e22; Burdette and Whitaker (n144) 46

¹⁶⁸ Janssen [2015] (n167) s6

¹⁶⁹ *Ibid*

¹⁷⁰ Janssen [2014] (n167) e25

¹⁷¹ *Ibid* e26

¹⁷² *Ibid* e22; Janssen [2015] (n167) s6

¹⁷³ Janssen [2014] (n167) e22

¹⁷⁴ Herrington and Brussoni (n4) 477

¹⁷⁵ Burdette and Whitaker (n144) 46-7

brain and body for 'a pattern of varied stimulation from the environment that subserves its own optimal development'.¹⁷⁶

Another way in which play assists children's physical development is through encouraging motor skill development.¹⁷⁷ Development of fine and gross motor skills is naturally and uniquely embedded within children's play. As children play and engage with stimuli such as blocks, Play-Doh, bikes or skateboards, they are developing fine motor skills and control, as well as hand-eye coordination and accuracy.¹⁷⁸ As children crawl through tunnels, jump over logs, run and skip they are improving their gross and locomotor skills.¹⁷⁹ Such play activities contribute to the development of physical attributes such as co-ordination, bodily strength, agility, and balance. Whilst playing catch or pushing trains along tracks, children develop hand, eye and foot coordination.¹⁸⁰ Development of these physical skills is vital for writing, using cutlery, hygiene skills (e.g. brushing teeth and changing clothes), reading (turning book pages) and carrying and handling items appropriately.¹⁸¹ Research suggests there is a significant relationship between motor skill development and cognitive achievement,¹⁸² and shows that motor skill development influences the levels of activity children engage in, impacting upon obesity and other health-related issues.¹⁸³

¹⁷⁶ Ibid

¹⁷⁷ H Williams, 'The development of sensory-motor function in young children', in V Seefeldt, (ed) *Physical Activity and Well-Being* (AAHPERD, 1986)

¹⁷⁸ L Dinehart and L Manfra, 'Associations between low-income children's fine motor skills in preschool and academic performance in second grade' [2013] 24 *EarlyEducDev* 138, 141; C Naylor and E Bower, 'Modified constraint-induced movement therapy for young children with hemiplegic cerebral palsy: a pilot study' [2005] 47 *DMCN* 365, 366

¹⁷⁹ Bunker (n160) 470; *Learning through Physical Play* (Early Years: The Organisation for Young Children), 1 <<http://www.early-years.org/parents/docs/learning-through-physical-play.pdf>> accessed October 2016

¹⁸⁰ Ibid

¹⁸¹ Ibid 4

¹⁸² SH Son and S Meisels, 'The relationship of young children's motor skills to later reading and math achievement' [2006] 52 *Merrill-Palmer Q* 755, 772

¹⁸³ H Williams et al., 'Motor Skill Performance and Physical Activity in Preschool Children' [2008] 16 *Obesity* 1421

Fjortoft investigated the relationship between natural landscape play and motor fitness. She discovered a statistically significant increase in motor fitness, balance, and coordination when children were able to access a natural, “complex”, environment for play.¹⁸⁴ She found that children in natural play environments engage more in both functional and construction play. Functional play includes ‘running, jumping, throwing, climbing, crawling, rolling, swinging, sliding, etc’, involved in games such as tag, leapfrog, and hide and seek.¹⁸⁵ Construction play involves engagement with loose objects such as branches, leaves, and twigs, and includes play activities such as den and sculpture building.¹⁸⁶ Whilst some of these activities may be achievable in non-natural environments such as indoor or on Kit, Fence and Carpet (KFC) playgrounds,¹⁸⁷ Fjortoft’s study shows that natural play provides the best environment for physical development.¹⁸⁸

Similar findings were discovered in a study comparing children’s play on a KFC playground and a nature-based playground.¹⁸⁹ It found that nearly 60% of play episodes on the KFC playground lasted ≤five minutes, with 35% lasting 6-11 minutes, and no play episode continuing >15 minutes.¹⁹⁰ This contrasted with the duration of play experienced in the nature-based playground which saw >7% of play episodes lasting 26-30 minutes, with many lasting longer than the observation period.¹⁹¹ The nature-based

¹⁸⁴ I Fjortoft, ‘Landscape as Playscape: The Effects of Natural Environments on Children’s Play and Motor Development’ [2004] 14 *ChildYouthEnviron* 21, 21 and 38

¹⁸⁵ Ibid 36

¹⁸⁶ Ibid 36

¹⁸⁷ Herrington and Brussoni (n4) 478

¹⁸⁸ This reflects the approach taken by the Committee on the Rights of the Child in ‘General Comment No.17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art.31)’ (2013) CRC/C/GC/17, para.32

¹⁸⁹ A Luchs and M Fikus, ‘A comparative study of active play on differently designed playgrounds’ [2013] 13 *JAEOl*, 206

¹⁹⁰ Ibid 214-215

¹⁹¹ Ibid 215

playground facilitated complex play, as opposed to the KFC playground which saw children sedentarily queueing to use play equipment.¹⁹²

6. Enhancing Capabilities

The relationship of human rights, children, and the Capability Approach has been examined extensively by other scholars.¹⁹³ The Capability Approach cannot be ignored in this context as the Capability Approach emphasises development, freedom and dignity – concepts interconnected with the right to play – and, Nussbaum lists ‘play’ as a Central Human Capability.

The Capability Approach has two key proponents, Sen and Nussbaum, although they have slightly different takes on how it should be understood. Sen sees capabilities as opportunities, or the range of opportunities, available to an individual in order ‘to lead one type of life or another’.¹⁹⁴ These signify the numerous combinations of functioning (being and doing) that an individual can achieve, and thus constitutes one’s freedom.¹⁹⁵ Sen, therefore views capabilities as opportunities for choice, and this opportunity constitutes freedom. Nussbaum views capabilities as ‘those entities that enable people to execute their human functions’¹⁹⁶ and relate to what an individual is actually able to do and be.¹⁹⁷ She splits capabilities into three

¹⁹² Ibid 218-219

¹⁹³ N Peleg, ‘Reconceptualising the Child’s Right to Development: Children and the Capability Approach’ [2013] 21 *IJCR* 523, 526; I Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-examined* (OBP, 2017); M Biggeri, J Ballet, F Comim (eds) *Children and the Capability Approach* (Palgrave MacMillan, 2011); R Dixon and M Nussbaum, ‘Children’s Rights and a Capability Approach: The Question of Special Priority’ [2012] 97 *CornellLLRev* 549

¹⁹⁴ A Sen, *Inequalities Re-Examined* (Clarendon Press, 1992), 40

¹⁹⁵ Peleg (n193) 531, citing Ibid 4

¹⁹⁶ Ibid 531

¹⁹⁷ M Nussbaum, ‘Women’s Capabilities and Social Justice’ [2000a] 1 *JHumDev* 219, 242; Robeyns (n193) 92-96

types: basic, internal and combined capabilities.¹⁹⁸ Her understanding of 'functionings' relates to the active realisation of capabilities.¹⁹⁹

Under Sen's approach, play can be understood as *expanding* a child's capabilities – it expands the opportunities available to a child to lead one type of life or another. It does this due to its instrumental value in developing children's cognitive, physical, social and emotional abilities (or, in this context, capabilities), necessary for choice over the way in which the child desires to live its life (or its freedom).²⁰⁰ The role of play in expanding children's capabilities is evident when '[t]aking a view that people should not be bound by choices determined by others [and rather that...] people should have a stake in shaping their own lives in a way that respects their agency'.²⁰¹

Under Nussbaum's approach, play is an entity that enables children to execute their human functions. However, for Nussbaum it is also more than this – it is a 'minimum core social entitlement[]'.²⁰² Nussbaum contends that a society that fails to guarantee the capabilities in her list to all its citizens 'falls short of being a fully just society, whatever its level of opulence'.²⁰³ Nussbaum thus includes play in a theory of social justice.²⁰⁴ Nussbaum argues that her list constitutes the 'central requirements of a life with

¹⁹⁸ M Nussbaum, *Women and Human Development: The Capability Approach* (CUP, 2000b) 5

¹⁹⁹ M Nussbaum, *Creating Capabilities: The Human Development Approach* (HUP, 2011) 25, (and her Chpt.2 for more on basic/internal/human capabilities)

²⁰⁰ On development as freedom, A Sen, *Development as Freedom* (OUP, 1999)

²⁰¹ Peleg (n193) 529 (in this context, Peleg notes the role of the right to development in expanding children's capabilities and thus 'increasing their real opportunities'. A notable absence of discussion of the right to play is evident in his work, considering the necessity and value of play in the development of the child).

²⁰² M Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (HUP, 2006) 75. The link between play and others of Nussbaum's Central Human Capabilities (e.g. 'Sense, Imagination and Thought', 'Emotions', 'Practical Reason' and 'Affiliation', 76-77) is evidenced throughout this chapter.

²⁰³ Ibid 75

²⁰⁴ S Freeman, 'Book Review - Frontiers of Justice: The Capabilities Approach vs. Contractarianism' [2006] 85 *Tex* 385

dignity',²⁰⁵ and that the absence of each capability results in 'a life [that] is not worthy of human dignity'.²⁰⁶ Thus, for a child's life to be worthy of human dignity, for Nussbaum, they must have play.

The link between human rights and the Capability Approach rests on this notion of dignity and global justice.²⁰⁷ The value of looking at human rights through the lens of the Capability Approach, or vice versa, is examined extensively by Robeyns.²⁰⁸ Whilst this is not being scrutinised here, it is noteworthy that play has such a central position within the Capability Approach – an approach that centres on dignity and social justice, sharing its aims with human rights – consequently evidencing another way in which the importance of play for children can be advanced.

7. Conclusion

This chapter has shown that play, and particularly natural and make-believe play, has an unrivalled role in the development of the child. This feeds into an understanding of the right to play as vital for children, supporting a move away from viewing the right to play as a luxury. Protecting the right to play serves to view the child with dignity. Having demonstrated the vital importance of play for children, the thesis now turns to examine the challenges that must be overcome in realising the right to play.

²⁰⁵ Nussbaum (n202) 75

²⁰⁶ Ibid 78

²⁰⁷ Ibid (Nussbaum claim's CA to be a 'species of a human rights approach' due to this link 'to the idea of human dignity'); Robeyns (n193) 162-3

²⁰⁸ Robeyns (n193) 160-8; Dixon and Nussbaum (n193) on the specific context of children's rights.

Chapter 3: Challenges to be Overcome in Realising the Right to Play

1. Introduction

Play is 'all around us yet goes mostly unnoticed or unappreciated until it is missing'.¹ When play is absent, it can have a major effect on children – on their development and well-being. General Comment 17 (GC17) highlights 11 separate challenges to the realisation of the right to play that must be addressed as states take steps to realise Article 31.² These challenges are varied, with no single society enjoying complete freedom from challenges to the realisation of these rights.

Those related to the right to play can be grouped into five topics, the first being lack of recognition of the importance of play.³ This is an overarching challenge as it is due to this lack of recognition that the other challenges, and delays in responding to them sufficiently, occur. It has important implications for how governments take steps towards realising the right to play, and how parents and the local community affect the realisation of the right. The second topic, safe space for play, covers a range of issues such as hazardous environments, access to nature, children in public spaces, and the balancing of risk and safety.⁴ The Committee expresses concern

¹ S Brown, *Play: How it shapes the brain, opens the imagination, and invigorates the soul*, (Avery 2010) 6

² Committee on the Rights of the Child (ComRC) 'General Comment No.17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art.31)' (2013) CRC/C/GC/17 (GC17)

³ Ibid para.33

⁴ Ibid paras.34-40

surrounding the pressure to achieve academically,⁵ and children's overly structured schedules.⁶ These are grouped together under the heading of 'the scholarisation of childhood'. The Committee highlights a neglect of Article 31 rights in development programmes.⁷ This raises the matter of realising the right to play in contexts of conflict, disaster, poverty and trauma.⁸ Finally, the Committee highlights two aspects relating to technology – the growing role of electronic media, and the marketing and commercialisation of children's play.⁹

All these challenges affect children, but some children are more vulnerable. Article 2 of the Convention makes it clear that all rights must be implemented in a non-discriminatory manner.¹⁰ The Committee specifies several groups of children as requiring 'particular attention to realise' their Article 31 rights:

'including, *inter alia*, girls, children with disabilities, children living in poor or hazardous environments, children living in poverty, children in penal, health-care or residential institutions, children in situations of conflict or humanitarian disaster, children in rural communities, asylum-seeking and refugee children, children in street situations, nomadic groups, migrant or internally displaced children, children of indigenous origin and from minority groups, working children, children without parent and children subjected to significant pressure for academic attainment'.¹¹

In addition to these groups, adolescents face particular challenges in their enjoyment of the right to play due in part to the perceptions of adolescents

⁵ Ibid para.41

⁶ Ibid para.42

⁷ Ibid para.43

⁸ Ibid paras.49 and 53

⁹ Ibid paras.45-47

¹⁰ Article 2 UNCRC. This is discussed in greater depth in Chapter 5.

¹¹ ComRC GC17 para.16, and paras.6, 23, 24, 29 and 48-53

in public space, the focus of play-related funding on younger children, and a lack of understanding of how adolescents play.¹² This chapter entwines discussion on inequalities of access, highlighting individual groups of children where relevant to the discussion, whilst accepting that there are nuances to each challenge for each group. It discusses specific challenges facing the girl child in Section 5.

2. Safe Space for Play

Several of the challenges raised in GC17 deal with the topic of safe space for play: unsafe and hazardous environments, resistance to children's use of public spaces, balancing risk and safety, and a lack of access to nature.¹³ They reflect a desire of the Committee to protect children from harm and to allow them to take risks. The challenge of providing safe space for play covers issues of safe environments, access to nature, and perceptions and responses to children's use of public spaces. The cumulative effects of environmental and human hazards to safe space to play, the paucity of accessible natural play space, and negative attitudes toward children in the public space serve to reinforce viewing private, indoor, space as the 'natural' space for children.¹⁴ The issue of safe space for play is heavily linked to that of urban planning through, *inter alia*, managing traffic levels, planning for accessible play space (natural and unnatural) close to children's homes, and providing appropriate play space for adolescents.

¹² Discussed throughout the chapter, and in Chapter 6.

¹³ GC17 paras.34-40

¹⁴ L Karsten, 'It all used to be better? Different generations on continuity and change in urban children's daily use of space' [2005] 3 *ChildGeog* 275; G Valentine 'Children Should Be Seen And Not Heard: The Production And Transgression Of Adults' Public Space' [1996] 17 *UrbanGeog* 205; K Malone and L Hasluck, 'Geographies of Exclusion: Young People's Perceptions and Use of Public Space', *Family Matters: No.49* (Australian Institute of Family Studies, 1998) 20-26

2.1. Safe Environments

In GC17, the Committee emphasises that children need access to spaces 'free from inappropriate hazards', and states that children 'must not be exposed to harm', whilst affirming that 'some degree of risk and challenge is integral to play... and is a necessary component of the benefits of these activities'.¹⁵ This point is supported by research, shown as necessary for children to develop the ability to manage risks through to adulthood.¹⁶ 'All activities that involve risk-taking can... lead to adverse outcomes', however the 'management of risk in a climate of surplus safety negatively impacts' upon children.¹⁷ There must be a careful balance needed in realising the right to play, necessitating a balance in management of risks and reduction of hazards whilst not adversely affecting children.

The Committee recommends that states both 'take action to reduce unacceptable hazards in children's environments' and inform, equip and empower 'children to take necessary precautions to enhance their own safety'.¹⁸ This reveals two insights into the Committee's perceptions on the right to play. The Committee states that there should not be '*inappropriate*' or '*unacceptable* hazards in children's environments'.¹⁹ This suggests that some hazards are small enough that the importance of protecting the right to play outweighs the potential harm caused to the child through their play. This distinction is important when reflecting on topics such as children's

¹⁵ GC17 paras.34 and 39

¹⁶ M Brussoni et al., 'Risky Play and Children's Safety: Balancing Priorities for Optimal Child Development' [2012] 9 *IntJEnvironRes Public Health* 3134; M McGinley, 'Can Hovering Hinder Helping? Examining the Joint Effects of Helicopter Parenting and Attachment on Prosocial Behaviours and Empathy in Emerging Adults' [2018] 179 *JGenPsychol* 102; A Luebbe et al., 'Dimensionality of Helicopter Parenting and Relations to Emotional, Decision-Making, and Academic Functioning in Emerging Adults' [2018] 25 *Assessment* 841; NF Aziz and I Said, 'The Trends and Influential Factors of Children's Use of Outdoor Environments: A Review' [2012] 38 *Procedia SocBehavSci* 204, 209

¹⁷ S Wyver et al., 'Ten Ways to Restrict Children's Freedom to Play: the problem of surplus safety' [2010] 11 *CIEC* 263, 264

¹⁸ GC17 para.39

¹⁹ *Ibid* (emphasis added)

outdoor play, the design of neighbourhoods, the oversight of children's play, and initiatives such as adventure playgrounds.²⁰ The second insight relates to who is responsible for the safety of children during play. The Committee places responsibility on both the state and the child. Nonetheless, whilst the child may have some responsibility in this matter, the onus is ultimately on the state, as treaty member, to ensure that children have been equipped with the skills and knowledge to remain safe in their play; skills learnt and developed through risky play.²¹

In addition to states and children, the Committee stresses the role of parents in protecting children during their play.²² The Committee states that with 'respect of younger children, spaces which provide opportunities for exploration and creativity should enable parents and caregivers to maintain oversight, including by means of eye and voice contact', and that children's play spaces should be 'close to their own homes'.²³ This has implications for the state's role in providing such space. The Committee acknowledges the need for the parents' role to adapt throughout childhood, requiring an adaptable approach to play oversight and space.²⁴

Nevertheless, there is a danger that the Committee's advice perpetuates notions of 'helicopter parenting', the over-management of children's play,²⁵ and undermines arguments against reductions in the benefits of independent

²⁰ Brussoni et al. (n16); MB Staempfli, 'Reintroducing adventure into children's outdoor play environments' [2009] 41 *EAB* 268

²¹ For evidence of the development of these skills through play, Chapter 2. L McFarland and SG Laird, 'Parents' and Early Childhood Educators' Attitudes and Practices in Relation to Children's Outdoor Risky Play' [2018] 46 *EarlyChildEducJ* 159

²² For discussion of duty bearers, Chapter 5

²³ GC17 para.34

²⁴ Chapter 5 Sections 1 and 3.3

²⁵ McGinley (n16); Luebbe et al. (n16); V Darlow, JM Norvilitis and P Schuetze, 'The Relationship between Helicopter Parenting and Adjustment to College' [2017] 26 *JChildFamStud* 2291; LEO Kennair, EBH Sandseter and D Ball, 'Risky Play and Growing Up: How to Understand the Overprotection of the Next Generation', in A Kaufman and J Kaufman (eds) *Pseudoscience: The Conspiracy Against Science* (MIT Press, 2019); Wyver et al. (n17)

mobility.²⁶ Research has found that parental concerns about children's safety has significant unintended consequences on the nature of childhood and options available for play. Parents are misjudging risks and overprotecting their children from 'all sorts of real and largely imagined dangers'.²⁷ These fears are societal, propagated by sensationalist media reports, policies and individualistic responses.²⁸ This disproportionately affects children from poorer neighbourhoods, where parents are particularly concerned about safety and crime.²⁹ These concerns have led to a considerable decrease in the frequency of outdoor play for children in comparison to their parents' and grandparents' experiences.³⁰ Research undertaken in the West shows that even activities such as 'roaming freely with friends' and 'walking unescorted to and from school' are becoming much less common, with beliefs that children should not be outside unaccompanied or without close monitoring increasingly prevalent.³¹

The Committee's statements have the potential to deepen these patterns, where not qualified with statements emphasising the importance of free play for children away from close parental supervision. The Committee added

²⁶ J Veitch, J Salmon and K Ball, 'Children's Perceptions of the Use of Public Open Spaces for Active Free-play' [2007] 5 *ChildGeog* 409, 416; Wyver et al. (n17) 271; A Page et al., 'Why Temporary Street Closures for Play Makes Sense for Public Health', (*Play England*), 5 <<http://www.playengland.org.uk/wp-content/uploads/2017/07/StreetPlayReport1web-4.pdf>> accessed March 2019

²⁷ P Bateson and P Martin, *Play, Playfulness, Creativity and Innovation* (CUP, 2013) 98-99; Wyver et al. (n17); S Adams et al., 'Considering the Natural Environment in the Creation of Child-Friendly Cities: Implications for Children's Subjective Well-being' [2019] 12 *ChildIndicRes* 545, 550

²⁸ J Whirlock, 'The Role of Adults, Public Space, and Power in Adolescent Community Connectedness' [2007] 35 *JCommPsychol* 499; Valentine (n14); Wyver et al. (n17); Malone and Hasluck (n14) 26; H Woolley, 'Freedom of the City: Contemporary Issues and Policy Influences on Children and Young People's Use of Public Open Space in England' [2006] 4 *ChildGeog* 45, 46; E Gray et al., 'Political Socialization, Worry about Crime and Antisocial Behaviour: An Analysis of Age, Period and Cohort Effects' [2019] 59 *BJC* 435

²⁹ R Kimbro and A Schachter, 'Neighbourhood poverty and maternal fears of children's outdoor play' [2011] 60 *FamRelat* 461; R Clements, 'An investigation of the state of outdoor play' [2004] 5 *CIEC* 68; LA Weir, D Etelson and DA Brand, 'Parents' perceptions of neighbourhood safety and children's physical activity' [2006] 43 *PrevMed* 212

³⁰ G Valentine and J McKendrick, 'Children's outdoor play: exploring parental concerns about children's safety and the changing nature of childhood' [1997] 28 *Geoforum* 219; Karsten (n14); Clements (n29)

³¹ Bateson and Martin (n27) 99; Wyver et al. (n17) 271

that children should have 'independent mobility as their capacities evolve', although the extent and time for this is left to interpretation.³² The ability to play outdoors and unaccompanied is vital for child development, with concern raised over children's ability to manage aggression, 'cross busy roads', practice independence, and 'manage every day risks'.³³ It has been argued that 'surplus safety', pushed by parents, governments and companies worried about being sued, is leading to significant long-term risks to physical and mental health, owing to a lack of 'important developmental experiences'.³⁴ This suggests that parental concerns about safety must be addressed to realise the right to play and negate damaging effects of parental fears. The Committee's advice on ensuring oversight of children's play must be qualified.

The Committee's guidance on this matter is conflicting, warning against 'the increasing levels of monitoring and surveillance' of children's play spaces, stating that this leads to 'consequent constraints on their freedom to play', and requiring management of levels of risk and parental oversight of play.³⁵ The Committee's guidance exemplifies the difficulty in balancing children's play and protection. To judge the levels of risk a child should be exposed to the Committee recommends taking into account the child's best interests, as well as 'listening to children's experiences and concerns'.³⁶ Such measures would go some way towards ensuring a balance between safe

³² GC17 para.34

³³ P Gray, 'The decline of play and the rise of psychopathology in children and adolescents' [2011] 3 *AmJPlay* 443

³⁴ Wyver et al. (n17); Brussoni et al. (n16); Kennair et al. (n25) 186; Page et al. (n26); Ibid

³⁵ GC17 paras.37, 34 and 39; On increased monitoring and surveillance J Bodnar, 'Reclaiming Public Space' [2015] 52 *UrbanStud* 2090, 2096; Woolley (n28) 47. Other research suggests reductions in monitoring and surveillance of children's play spaces, and emphasises the presence of monitoring historically: Wyver et al. (n17) 271; Karsten (n14)

³⁶ GC17 para.39

spaces for play, fears surrounding children's safety, and the support of children's autonomy in play.

The Committee underlines that children are to be protected in their play from both environmental and human hazards. Parental fears relating to children's play stem largely upon human hazards such as crime and violence.³⁷ These are echoed by the Committee, warning against:

'high levels of crime and violence; community unrest and strife; drug and gang-related violence; risk of kidnapping and child trafficking; open spaces dominated by hostile youth or adults; aggression and sexual violence towards girls', and bullying.³⁸

The Committee argues that these dangers 'severely restrict children's opportunities for safe play'.³⁹ This promotes fear surrounding outdoor play as it repeats negative language surrounding potential and perceived dangers of outdoor play. Historically, children have 'played out' whilst risks of such hazards remained prevalent.⁴⁰ There is thus a careful balance to strike between raising attention of such hazards, reducing them through collective action, and ensuring that discussion does not further fuel a decrease in outdoor play through individualistic responses.⁴¹

It is important to reflect upon two points made by the Committee in their list of human hazards. The Committee refers to 'hostile *youth*'.⁴² The Committee implies that the ability to be hostile to children, or perpetrators of abuse, is limited to older children, and limits victims to younger children,

³⁷ Kimbro and Schachter (n28); Clements (n29); Weir (n29); Bateson and Martin (n27) 99

³⁸ GC17 para.36, 39 and ComRC, 'Concluding Observations on the combined third and fourth periodic reports of China' (29 October 2013) CRC/C/CHN/CO/3-4, para.77

³⁹ GC17 para.36

⁴⁰ Karsten (n14)

⁴¹ Wyver et al. (n17); B Mayall, 'The sociology of childhood in relation to children's rights' [2000] 8 *IJCR* 243, 250

⁴² GC17 para.36 (emphasis added)

undermining the potential for victims to be the same age or older than perpetrators.⁴³ The statement perpetuates negative perceptions of adolescents.⁴⁴ The Committee refers to 'aggression and sexual violence towards girls', neglecting such risks to boys.⁴⁵ This statement echoes perceptions of girls as vulnerable, in need of greater protection than boys, and of boys as stronger and in need of less care and protection, or immune to such violence.

In addition to 'human hazards', the Committee refers to threats from several physical environmental hazards:

'polluted water; open sewer systems; overcrowded cities; uncontrolled traffic; poor street lighting and congested streets; inadequate public transport; lack of safe local play areas, green spaces and cultural facilities; informal urban "slum" settlements in hazardous, violent or toxic environments'; as well as threats from 'landmines and unexploded ordnance' in post-conflict contexts.⁴⁶

Some hazards present unique challenges to specific contexts, such as the threats from landmines. The International Campaign to Ban Landmines – Cluster Munition Coalition's Annual Landmine Monitor states that, in 2017, of the 7,239 casualties from landmines 2,452 were children.⁴⁷ This evidences a need for effected states to reduce the prevalence of such hazards to realise the right to play.

⁴³ Ibid para.39

⁴⁴ Section 2.3

⁴⁵ GC17 para.36

⁴⁶ Ibid para.35

⁴⁷ Landmine and Cluster Munition Monitor, 'International Campaign to Ban Landmines – Cluster Munition Coalition', *Landmine Monitor 2018* (Landmine and Cluster Munition Monitor), 2 <http://the-monitor.org/media/2918780/Landmine-Monitor-2018_final.pdf> accessed March 2019

Many of the listed environmental hazards are most acute in urban environments. Statistics show that the global urban population grew from 751 million in 1950 to 4.2 billion in 2018, accounting for 55% of the world population and is 'expected to increase to 68% by 2050',⁴⁸ with commentators suggesting 'the world has now entered the urban society age'.⁴⁹ Rapid urbanisation is most critical in Asia and Africa, taking '90% of this increase'.⁵⁰ With rapid urbanisation come dangers of 'environmental blight, inadequate housing, poverty and disease'.⁵¹ These dangers are particularly intense in slums and shanty towns.⁵² The speed of urbanisation, a lack of resources and 'badly planned urban environments' are to blame for the negative effects of urbanisation.⁵³ These challenges are problematic for children in poverty, as they make up a large percentage of children in urban environments, are likely to be separated from those with greater political influence, and are less able to take steps to reduce the impact of urbanisation on their own lives, including travelling further to access play space.⁵⁴ Evidence shows that children living in low-income urban areas are most likely to lack adequate access to green spaces usable for play.⁵⁵

⁴⁸ UN Department for Economic and Social Affairs (UN DESA), '68% of the world population projected to live in urban areas by 2050, says UN' (16 May 2018) (*United Nations*) <<https://www.un.org/development/desa/en/news/population/2018-revision-of-world-urbanization-prospects.html>>accessed March 2019

⁴⁹ J Zhao et al., 'Rapid urbanisation, ecological effects and sustainable city construction in Xiamen' [2010] 17 *IntJSustDevWorld* 271, 271

⁵⁰ UN DESA (n47); PB Cobbinah, MO Erdiaw-Kwasie and P Amoateng, 'Africa's urbanisation: Implications for sustainable development' [2015] 47 *Cities* 62

⁵¹ A McMichael, 'The urban environment and health in a world of increasing globalisation: issues for developing countries' [2000] 78 *Bull WHO* 1117, 1118

⁵² It is expected that one-in-seven people will live in slums by 2020. K Malone, 'Children's Rights and the Crisis of Rapid Urbanisation' [2015] 23 *IJCR* 1, 4-5

⁵³ Aziz and Said (n16) 205

⁵⁴ McMichael (n51); Malone (n52); J Maas et al., 'Green space, urbanity, and health: how strong is the relation?' [2006] 60 *JECH* 587; Karsten (n14); Veitch et al. (n26)

⁵⁵ GC17 para.40; T Gill, *Street Play Initiatives in Disadvantaged Areas: Experiences and Emerging Issues*, (Play England, 2017) <<http://www.playengland.org.uk/wp-content/uploads/2017/07/StreetPlayReport2web.pdf>>accessed March 2019; Page et al. (n26)

Inequality in play experiences for urban children is not limited to the Global South.⁵⁶ An investigation into segregated play spaces in London found that children in social housing were blocked from accessing a 'communal playground', accessible to home owners.⁵⁷ The report showed that the 'communal' space contained flora and varied play equipment, whilst a separate space accessible to children in social housing was considerably smaller with limited play equipment and no green space.⁵⁸ Similarly, the situation facing children in urban, low socioeconomic settings in Amsterdam has been described by Karsten:

Their homes are small apartments, their streets are unattractive and their parents are poor, hard-working people. It is exactly these indoor children who suffer most: they have the least inside space in which to play, they have lost their access to outdoor space and they profit less from the modern amenities that make playing more pleasurable⁵⁹

The danger of high levels of air pollution in cities has been highlighted, with 93% of children worldwide living in environments with air pollution levels above World Health Organisation (WHO) guidelines.⁶⁰ This is connected to the Committee's listed challenges of overcrowded cities, hazardous or toxic environments and extends the challenge of polluted water to polluted air. Children are at greater risk to air pollution than adults because '[t]hey breathe faster than adults, taking in more air and, with it, more pollutants'.⁶¹

⁵⁶ H Grant, 'Too poor to play: children in social housing blocked from communal playground' (*Guardian Online*, 25 March 2019) <<https://www.theguardian.com/cities/2019/mar/25/too-poor-to-play-children-in-social-housing-blocked-from-communal-playground>> accessed March 2019

⁵⁷ Ibid

⁵⁸ Ibid. Images of the playgrounds included in report.

⁵⁹ Karsten (n14) 288

⁶⁰ World Health Organisation (WHO), *Air pollution and child health: prescribing clean air*, (World Health Organisation, 2018) WHO/CED/PHE/18.01, 7

⁶¹ Ibid 10

Effects of air pollution include infant mortality, harmed neurodevelopment, childhood cancers, obesity, respiratory problems, and severe mental health conditions, such effects clearly risk hampering a child's ability to play.⁶² A WHO report shows challenges for the girls child's access to time for play, as 'girls in households that used polluting fuels and technologies spent about 18 hours each week collecting wood or water' in comparison to 5 hours for girls 'in households [with] clean fuels and technologies.'⁶³ Air pollution is a significant challenge to the right to play as it leads both to adverse effects on children's health as they play, and may reduce time and ability to play.

The hazard of 'uncontrolled traffic' is noteworthy as the increasing numbers of cars poses a real challenge to the safety and prevalence of children's play space.⁶⁴ Karsten, found that the rapid increase in the number of cars in the period 1950 to 1975 in Amsterdam paralleled the 'rapid decrease in the number of children', leading to 'twice as many cars than children', with 'most of these cars parked in residential streets where children are 'supposed' to play'.⁶⁵ As space is made for traffic, by creating more and larger roads or concreting space for parking, availability of space for play is reduced.⁶⁶ Rather than having a rich experience of street play, many children 'only interact with their local streets through the windows of their cars as they drive backwards and forwards to their daily activities'.⁶⁷ Research evidences that parents are increasingly forced to drive further to access natural and

⁶² Ibid; JB Newbury et al., (2019) 'Association of Air Pollution Exposure with Psychotic Experiences During Adolescence' 76 *JAMA Psychiatry* 614

⁶³ WHO (n60) 15-6

⁶⁴ Adams (n27); Brussoni et al. (n16) 3138; Gill (n55)

⁶⁵ Karsten (n14) 276-7

⁶⁶ Gill (n55); Page et al. (n26)

⁶⁷ K Malone, 'The bubble-wrap generation: children growing up in walled gardens' (2007) 13 *Environ EducRes* 513, 524

outdoor play space such as parks inaccessible by foot from home, adding to traffic numbers on the road and reinforcing this cyclical issue.⁶⁸

2.2. Access to Nature

The optimum environment for play is that which is outdoors and includes access to nature.⁶⁹ The Committee warns against an 'increasing erosion of many spaces traditionally available to children'.⁷⁰ Such spaces have typically been outdoor, such as the street, fields, forests and streams many of which included access to nature. The Committee recognises the benefit of play in nature.⁷¹ Many factors contribute to a decrease in access to nature and outdoor play spaces. Disabled and institutionalised children face additional challenges in accessing natural and outdoor play spaces.

Urbanisation intensifies environmental hazards to play. It poses challenges to access to nature due in part to poor urban planning, failing to protect or provide sufficient natural space.⁷² As demand for space in urban environments increases, the likelihood of natural space being concreted or built upon for living space or for transportation increases.⁷³ This impacts upon play as it reduces the ability of children to access natural spaces for play. The importance of natural space for children's play and health has been proven in a study by Dadvand et al., finding significant links between excessive screen-time, BMI scores, obesity levels, respiratory health, and access to local green space.⁷⁴

⁶⁸ Veitch et al. (n26) 415

⁶⁹ GC17 paras.40 and 32

⁷⁰ Ibid para.40

⁷¹ Ibid paras.40, 58(f)

⁷² Aziz and Said (n16) 205

⁷³ Cobbinah (n50) 66

⁷⁴ P Dadvand et al., 'Risks and Benefits of Green Spaces for Children: A Cross-Sectional Study of Associations with Sedentary Behaviour, Obesity, Asthma and Allergy' [2014] 122 *EnvironHealth Perspect* 1329

Increased urbanisation, its corresponding lack of space, and the perceived need to continuously monitor children, has led to a shift away from natural play space to formulaic play settings. Such settings do not provide the best play experiences. Kit, Fence and Carpet (KFC) playgrounds provide limited play options through prescribed activities, whereas natural outdoor play spaces provide unstructured play opportunities.⁷⁵ Slides are 'designed for the express purpose of sliding in a seated position', with adults often preventing alternative use, whereas boulders arranged in a natural play space offer multiple uses, such as climbing, jumping, sitting, scaling and pretend play.⁷⁶ Natural play spaces increase play affordances for children of varying ages and competencies – they are not restricted to single uses requiring certain skills, but rather encourage children to explore and engage with the environment in creative ways that suits their abilities and interests.⁷⁷ Research shows that access to spaces such as wild lands was prevalent in the West just a generation ago, where children could explore challenging and exercising their skills in order to master challenging landscapes and unanticipated situations.⁷⁸

Studies have explored children's behaviours and reactions to natural play spaces. Moore and Wong observed children's reactions to the transformation of a yard into an "Environmental Yard" with a naturalized environment.⁷⁹ They found that children responded to the yard's diversity and richness, viewing it as a friendly environment and a place to belong and care for

⁷⁵ On the benefits of natural play spaces over formulaic play spaces on children's physical development, Chapter 2 Section 5.

⁷⁶ S Herrington and M Brussoni, 'Beyond Physical Activity: The Importance of Play and Nature-Based Play Spaces for Children's Health and Development' [2015] 4 *CurrObesRep* 477, 478

⁷⁷ Ibid; I Fjortoft, 'Landscape as Playscape: The Effects of Natural Environments on Children's Play and Motor Development' [2004] 14 *ChildYouthEnviron* 21

⁷⁸ Fjortoft (n77) 22; Valentine (n14); Karsten (n14); Veitch et al. (n26); Wyver et al. (n17)

⁷⁹ R Moore and H Wong, *Natural Learning: Creating Environments for Rediscovering Nature's Way of Teaching* (MIG Communications, 1997)

nature. Interviews conducted five and twenty years later saw participants discuss aspects of the yard that afforded diverse and complex play. They discovered that participants that had experienced the Environmental Yard were more environmentally conscious years later. Other studies have found that children prefer the 'realness' and variety offered by natural environments and associate outdoor space with adventure, challenge and risk.⁸⁰ Children describe typical and indoor play areas as 'rarely fulfil[ling] their needs'.⁸¹ Aspects of natural space that children highlighted as positive were not restricted to "obvious" play spaces such as grass for rolling around or trees for climbing, but included flowers which children valued highly due to 'the range of sensory responses and stimulation' they offered.⁸² These studies demonstrate the diverse and complex ways in which natural environments are valued by children for their play.

Challenges facing access to natural outdoor play space are heightened for children facing additional challenges such as being confined to institutions or encountering physical and mental disabilities. The Committee refers to 'residential homes and schools, hospitals, detention centres, remand homes and refugee centres' as institutions often characterised by limited or denied opportunities for play.⁸³ The Committee addresses this in Concluding Observations, highlighting poor conditions and opportunities for play.⁸⁴ It recommends states adopt measures to guarantee 'spaces and opportunities' for play for children in institutions.⁸⁵ These must not 'be restricted to

⁸⁰ M Rivkin, 'Outdoor Play – What Happens Here?' in S Wortham and J Frost (eds.) *Playgrounds for Young Children: National Survey and Perspectives* (AAHPERD, 1990); W Titman, *Special Places, Special People: The Hidden Curriculum of School Grounds*, (World Wide Fund for Nature/Learning Through Landscapes, 1994) 41

⁸¹ Titman (n80) 41

⁸² Ibid 41

⁸³ GC17 para.51

⁸⁴ For example: ComRC, 'Concluding Observations on the Combined Second and Third Periodic Reports of Serbia' (7 March 2017) CRC/C/SRB/CO/2-3 para.39(d)

⁸⁵ GC17 para.51

compulsory or organized activities' but rather should reflect the voluntary nature of play through 'safe and stimulating environments' open for children's 'free play'.⁸⁶ The Committee repeatedly requests that states mobilise 'all necessary human, technical and financial resources to initiatives that promote and facilitate children's playtime and other self-organized activities in... children's institutions',⁸⁷ and advise states to 'ensure that children's institutions provide time and space for play'.⁸⁸ These requests are reaffirmed in GC17.⁸⁹

Children with disabilities may be disproportionately disadvantaged in their attempt to access natural outdoor play environments.⁹⁰ GC17 describes ways in which children with disabilities may find it harder to enjoy their right to play, including exclusion from schools and 'informal and social arenas' where play takes place; isolation; 'cultural attitudes and negative stereotypes which are hostile and rejecting of children with disabilities'; physical inaccessibility of play spaces; policies which exclude them from spaces designated for play; barriers in communication and 'failure to provide interpretation and adaptive technology'; a lack of transport that is accessible to them; and inaccessible technology and media.⁹¹ The Committee emphasises that '[p]ro-active measures are needed to remove barriers and promote accessibility to and availability of inclusive opportunities for children with disabilities to participate' and realise their right to play.⁹²

⁸⁶ Ibid. The Committee underscores voluntarism of play; Chapter 1

⁸⁷ For example: ComRC, 'Concluding Observations on the Combined Second and Third Periodic Reports of Brunei Darussalam' (24 February 2016) CRC/C/BRN/CO/2-3 para.62; ComRC, 'Concluding Observations on the Fifth Period Report of Bangladesh' (30 October 2015) CRC/C/BGD/CO/5, para.69; ComRC, 'Concluding Observations on the Fourth Periodic Report of Eritrea' (2 July 2015) CRC/C/ERI/CO/4, para.62; ComRC, 'Concluding Observations: Japan' (20 June 2010) CRC/C/JPN/CO/3, para.76

⁸⁸ ComRC, 'Concluding Observations: The Plurinational State of Bolivia' (16 October 2009) CRC/C/BOL/CO/4, para.70

⁸⁹ GC17 para.51

⁹⁰ Ibid para.50

⁹¹ Ibid

⁹² Ibid

In its Concluding Observations, the Committee criticises states for conditions that hamper the disabled child's access to play facilities due to 'segregation, neglect... and exclusion from education and play', or due to 'poor play infrastructures'.⁹³ The Committee recommends that states ensure accessible and inclusive play facilities and transport systems.⁹⁴ As with children in institutions, it may be that measures to provide access to natural outdoor play environments for disabled children are more resource intensive than for other children. The obligation of non-discrimination requires that such measures be taken.⁹⁵

Fjortoft highlights that 'children's physical play environments and facilities for play are changing and the opportunities for free play in stimulating environments seem to be declining'.⁹⁶ The decrease of access to play space is further intensified by the reduction of time outdoors during the school day.⁹⁷ This poses a significant challenge to the realisation of the right to play, with steps needed to reverse this trend. Herrington and Brussoni refer to schools in Canada taking steps to green their grounds and encourage play outdoors, resulting in children engaging in 'more vigorous activity' and increases in physical activity evident in large percentages of the school populations.⁹⁸ In GC17, the Committee expresses a desire to see 'universal design' implemented to support the right to play.⁹⁹ This has similar goals and principles to that of the UNICEF Child Friendly Cities Initiative.¹⁰⁰ Wider

⁹³ CRC/C/SRB/CO/2-3 (n84), para.39(d); ComRC, 'Concluding Observations: United Kingdom of Great Britain and Northern Ireland' (20 October 2008) CRC/C/GBR/CO/4, para.68

⁹⁴ For example: ComRC 'Concluding Observations on the combined fourth to sixth periodic reports of Bahrain', (27 February 2019) CRC/C/BHR/Co/4-6, para.41

⁹⁵ Chapter 5

⁹⁶ Fjortoft (n77) 22

⁹⁷ GC17 para.41

⁹⁸ Herrington and Brussoni (n76) 479 referencing D Coe et al., 'Children's physical activity levels and utilization of a traditional versus natural playground' [2014] 24 *ChildYouthEnviron* 1 and J Dymont and A Bell, 'Grounds for movement: green school grounds as sites for promoting physical activity' [2008] 23 *HealthEducRes* 9952

⁹⁹ GC17 para.58(e). Discussed further in Chapter 5.

¹⁰⁰ UNICEF Child Friendly Cities Initiative <<https://childfriendlycities.org/>> accessed March 2019

support and implementation of this initiative may help reverse some challenges facing children with a lack of local access to natural space for play.

2.3. Children's use of Public Space

A final challenge raised by the Committee with regards to safe space for play is that of children's access and use of public space, which is acute for adolescents. This challenge centres upon the hostility and lack of tolerance towards children's play in the public sphere. This is heightened for adolescents due to perceptions of adolescents 'as "problems" and/or delinquents', and the portrayal of them 'as a threat by widespread negative media coverage and representation', which further fuels these perceptions.¹⁰¹

This issue was discussed by the Committee in *General Comment No.20 on the implementation of the rights of the child during adolescence*.¹⁰² The Committee highlights that societal drivers serve to 'exclude and marginalize' adolescents.¹⁰³ It raises concern with:

widespread negative characterization of adolescence leading to narrow problem-focused interventions and services, rather than a commitment to building optimum environments to guarantee the rights of adolescents and support the development of their physical, psychological, spiritual, social, emotional, cognitive and economic capacities¹⁰⁴

¹⁰¹ GC17 para.37

¹⁰² ComRC, 'General Comment No.20 on the Implementation of the Rights of the Child during Adolescence', (2016) CRC/C/GC/20 (GC20)

¹⁰³ Ibid para.12

¹⁰⁴ Ibid para.15

Chapter 2 evidenced the right to play's centrality to the development of such capacities. Threats to the realisation of adolescents' right to play are of considerable importance. This is clear when the importance of the 'life stage' of adolescence is considered, as 'a rapid curve of development'.¹⁰⁵ The Committee notes that '[a]dolescence itself can be a source of discrimination' characterised by treatment 'as dangerous or hostile, incarcerated, exploited or exposed to violence', whilst '[p]aradoxically... treated as incompetent and incapable of making decisions about their lives'.¹⁰⁶ The Committee makes direct reference to this issue and its relationship to Article 31, highlighting that '[f]ear of and hostility towards adolescents in public spaces, and a lack of adolescent-friendly urban planning, educational and leisure infrastructure, can inhibit the freedom' of adolescents to experience these rights.¹⁰⁷

Research shows that a sharp increase in perception of children and youth as problematic in the public space took place in the 1980s and 1990s, in North America and Europe, concurrently with an increased concern over stranger-danger.¹⁰⁸ Moral panics about 'the anarchy and uncontrollability of unfettered youth' reinforced measures to remove young children from streets to protect them from adolescents, and adolescents from the streets to protect 'the moral order of the street'.¹⁰⁹ This reduces the ability of adolescents to realise their right to play as they are made unwelcome in public spaces.¹¹⁰

Several policy and other measures, described by some as 'aggressive social interventions and exclusionary practices',¹¹¹ have been undertaken to limit

¹⁰⁵ Ibid paras.2, 9 and 67

¹⁰⁶ Ibid para.21

¹⁰⁷ Ibid para.75

¹⁰⁸ Valentine (n14) 205

¹⁰⁹ Ibid 206

¹¹⁰ S Elsley, 'Children's Experience of Public Space' [2004] 18 *ChildSoc* 155, 159

¹¹¹ Malone and Hasluck (n14) 20

adolescent's freedom of movement and consequentially access to play spaces. Examples of such policies include Anti-Social Behaviour Orders and Injunctions to Prevent Nuisance and Annoyance in the United Kingdom.¹¹² These policies mirrored and fuelled public opinion of adolescents in public spaces as threatening and unwanted, despite them not specifically targeting youth.¹¹³ Fear of being perceived as a nuisance and of being in receipt of such orders further reduces adolescents' use of, and supports 'a broader trend towards elimination and exclusion' of adolescents from, public spaces.¹¹⁴ The securitisation of public space, particularly relating to adolescents has considerable negative effects on the ability of adolescents to play outdoors, and the realisation of their right to play. States must consider the cautions of the Committee against 'curfews on children; gated communities or parks; reduced noise-level tolerance; playgrounds with strict rules for "acceptable" play behaviour'; and the 'decreasing tolerance of children in public spaces'.¹¹⁵ These measures restrict the realisation of the right to play by limiting space available for play.

Privatisation and commercialisation of public space raise further challenges for the realisation of the right to play. Described as 'the two main trends in the transformation of public space bringing its decline', these issues go 'hand in hand'.¹¹⁶ The privatisation of public space does not lead to purely private space. As such 'private public space is not a complete oxymoron'.¹¹⁷ Rather, such spaces are strictly managed and publicly available private spaces. The

¹¹² DM Brown, 'Young people, Anti-Social Behaviour and Public Space: The Role of Community Wardens in Policing the 'ASBO Generation' [2013] 50 *UrbanStud* 538; C Johnstone, 'After the Asbo: Extending control over young people's use of public space in England and Wales' [2016] 36 *CritSocPol* 716

¹¹³ Brown (n112) 540

¹¹⁴ Johnstone (n112) 722; Malone and Hasluck (n14) 24

¹¹⁵ GC17 para.37

¹¹⁶ Bodnar (n35) 2095-2096

¹¹⁷ Ibid 2096

most common example of such space is shopping centres.¹¹⁸ These spaces are favoured by adolescents to meet, but they are often unwelcome or excluded.¹¹⁹ The changing role and purpose of public space through privatisation and commercialisation reduces the availability of accessible play spaces for children, particularly adolescents.

The exclusion of adolescents from public spaces, and perceptions of adolescents in public spaces as problematic, are concerning when examining research on what space is available for adolescents' play. Research shows that adolescents are not appropriately catered for in play provision. They look first at space close to home such as play areas and play parks, however these are described 'as 'for babies' and 'full of wee ones'', and are perceived as 'token concessions by adults' for play provision.¹²⁰ Spaces such as leisure centres are designed and managed in a way that makes them inaccessible to youth, not simply due to access costs.¹²¹ These points, alongside the reduction in natural space and increased urbanisation discussed above, suggest that in order for adolescents to find spaces to play they must travel farther from home and are then likely to face exclusionary measures that further hamper their enjoyment of their right to play.

Negative attitudes towards children in public spaces adversely affects children from minority backgrounds. This was evident in research conducted by Karsten in Amsterdam in which she found that children from migrant families faced one of two experiences: either they played outdoors but without integration with children from other backgrounds, and were viewed

¹¹⁸ F Chiodelli and S Moroni, 'Do malls contribute to the privatisation of public space and the erosion of the public sphere? Reconsidering the role of shopping centres' [2015] 6 *CityCultSoc* 35

¹¹⁹ Elsley (n110) 158; Malone and Hasluck (n14) 26; Ibid; Bodnar (n35) 2097

¹²⁰ Elsley (n110) 159

¹²¹ Malone and Hasluck (n14) 24

as 'coloniz[ing] the street at the expense of others' with other children kept indoors;¹²² or they were less likely to play outdoors due to feelings of insecurity and a lack of socialisation with children from other backgrounds.¹²³ Negative attitudes towards children, and migrant children, in public spaces has a cyclical effect. The Committee underscores that 'ethnic, religious, racial or caste discrimination can serve to exclude children' from the full realisation of their right to play,¹²⁴ particularly peer-play.¹²⁵ The Committee recommends that states '[e]nsure access to safe play areas, green spaces and cultural facilities for all children, in particular those from marginalized backgrounds'.¹²⁶ This may require measures that reduce prejudice and hostility towards minority communities, for which the first step should be removing policies that support segregation.¹²⁷ The Committee has made particular reference to adolescent migrant children, stating that 'inadequate attention paid to and insufficient respect shown for the cultures, values and world vision of adolescents from minority and indigenous groups can lead to discrimination, social exclusion, marginalisation and non-inclusion in public spaces'.¹²⁸

3. The Scholarisation of Childhood

The next challenge is that of pressure on children's educational achievement and schedules. The Committee identifies that '[e]arly childhood education is increasingly focused on academic targets and formal learning at the expense

¹²² Karsten (n14) 284-5

¹²³ Ibid 285-6

¹²⁴ GC17 para.52

¹²⁵ Ibid

¹²⁶ ComRC, 'Concluding Observations on the Combined Fourth and Fifth Periodic Report of Lebanon' (22 June 2017) CRC/C/LBN/CO/4-5, para.1(f); ComRC, 'Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (12 July 2016) CRC/C/GBR/CO/5, para.75(b)

¹²⁷ GC17 para.52; ComRC 'Concluding Observations of the Committee on the Rights of the Child: Romania' (30 June 2009) CRC/C/ROM/CO/4, para.77(g)

¹²⁸ GC20 para.35

of participation in play'.¹²⁹ It is critical of declining play in schools due to curricula, teaching methods, and schedules that do not recognise the need or provide opportunities for play, alongside reductions in permitted forms of play.¹³⁰ Moreover, '[e]xtracurricular tuition and homework are intruding on children's time' for play.¹³¹ These practices are symptomatic of a 'scholarisation of childhood',¹³² encroaching on the child's ability and time to play.

Pressures placed on children in education present challenges for the enjoyment of the right to play. Young children are pushed to reach 'school readiness' over being encouraged to 'play for their own purposes'.¹³³ Early years' educators are faced with pressure to reach formal targets,¹³⁴ rather than being supported to enable children to explore and develop naturally through free play. These pressures are realised alongside requirements to see children reading, writing, and understanding aspects of mathematics before 6 years of age in the UK, earlier than other European countries. Asian countries such as China introduce formal teaching even earlier.¹³⁵

Increasing school starting ages has been advocated based on evidence that teaching children academic skills of reading, writing and mathematics at too young an age may result in increased anxiety and a diminished motivation to learn.¹³⁶ Delayed school starting is viewed as preferable for children as it reduces the structure and pressure of academic attainment and increases

¹²⁹ GC17 para.41

¹³⁰ Ibid

¹³¹ Ibid and, for example, ComRC, 'Concluding Observations on the second period report of the Federated States of Micronesia' (3 April 2020) CRC/C/FSM/CO/2, para.63(b)

¹³² Mayall (n41) 250

¹³³ J Hewes, 'Let the children play: Nature's answer to Early Learning' (Early Childhood Learning Knowledge Centre) 7

¹³⁴ C Tickell, 'The early years: foundations for life, health and learning' (2012) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/180919/DFE-00177-2011.pdf> accessed May 2020

¹³⁵ Bateson and Martin (n27) 97

¹³⁶ D Elkind, *The power of play: how spontaneous, imaginative activities lead to happier, healthier children* (Hachette Books: 2008)

time for children to engage in free play.¹³⁷ A balance must be found in using play to assist children's learning.¹³⁸ '[E]arly educators see such tremendous potential in play for children's learning that we sometimes run the risk of overemphasising the learning and under emphasising the play'.¹³⁹

The effects of educational pressures on children's ability to engage in play are evident in East Asia.¹⁴⁰ Traditionally, emphasis in Asia on academic attainment and the acquisition of knowledge has been contrasted against the Western educational focus on creativity.¹⁴¹ These differences are reducing as Asian schools recognise 'limited cognitive capacities of young children' and offer more 'opportunities for breaks from intellectual tasks'.¹⁴² Meanwhile, children in the West are facing increased pressures by school curricula, reducing their opportunities for play.¹⁴³ Pressures of academic achievement have resulted in increased time spent doing homework, with Gill's survey finding that 55% of children claimed their free time was restricted by homework and 36% of children only playing with friends outside of school once a fortnight or less.¹⁴⁴ This contrasted with 80% of parents claiming they played with their friends outside of school multiple times a week as a child.¹⁴⁵ These practices pose challenges to children's physical and mental time to engage in free play. Increased pressure for early

¹³⁷ Parliamentary Office of Science and Technology (POST), 'Early Years Learning' (2000) POST-PN-140

¹³⁸ D Bergen, 'Play as the learning medium for future scientists, mathematicians and engineers' [2009] 1 *AmJPlay* 413; M Kangas, 'Creative and playful learning: learning through game co-creation and games in a playful learning environment' [2010] 5 *ThinkSkillsCreat* 1; POST (n137)

¹³⁹ Hewes (n133) 5

¹⁴⁰ For example: ComRC, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Republic of Korea' (24 October 2019) CRC/C/KOR/CO/5-6, para.41

¹⁴¹ K Kim, 'Learning from each other: creativity in East Asian and American education' [2005] 17 *CreatResJ* 337

¹⁴² D Bjorklund and R Douglas-Brown, 'Physical Play and Cognitive Development: Integrating Activity, Cognition and Education' [1998] 69 *ChildDev* 604, 604-5

¹⁴³ Bateson and Martin (n27) 101-2

¹⁴⁴ J Gleave and I Cole-Hamilton, 'A world without play' (Play England, 2012) 19 <<https://www.playengland.org.uk/media/371031/a-world-without-play-literature-review-2012.pdf>> accessed March 2019 referencing T Gill, 'Free Range Kids: Why children need simple pleasures and everyday freedom, and what we can do about it' (Dairylea, 2011)

¹⁴⁵ Ibid

acquisition of academic skills and emphasis on structured educational and recreational activities are perceived by scholars as threatening children's play,¹⁴⁶ with growing concern over the way in which children's free time is being 'associated only with learning, rather than the enjoyment of play itself'.¹⁴⁷

It is estimated that in the United States of America, a 25% reduction in children's free time occurred between 1981 and 1997, ostensibly due to 'increases in the amount of time children spend in structured activities'.¹⁴⁸ This reduction in free time is occurring both within and outside of schools.¹⁴⁹ A key factor affecting this is the excessively structured or programmed adult-decided schedules imposed on children.¹⁵⁰ These activities range from sports and other clubs to domestic chores. The feature restrictive to children's play is that they 'allow little or no time for self-directed activities',¹⁵¹ a condition intrinsic to the realisation of the right to play. They involve an element of pressure or requirement to participate.¹⁵² The Committee draws attention to the direction of government investment in children's play, leisure, and recreation toward 'organized competitive recreation'.¹⁵³

Research shows that reduction in time for children to engage freely in unstructured play can be attributed to an increase in structured, adult controlled, extra-curricular activities such as competitive sports, dance and

¹⁴⁶ Hewes (n133) 1 referencing E Zigler, 'Play under siege: A historical overview', in E Zigler et al., (eds.) *Children's Play: The roots of reading* (Zero to Three, 2004); J Evans, 'Where have all the players gone?' [1995] 3 *IntJPlay* 3

¹⁴⁷ Gleave and Cole-Hamilton (n144)

¹⁴⁸ H Burdette and R Whitaker, 'Resurrecting Free Play in Young Children: Looking Beyond Fitness and Fatness to Attention, Affiliation, and Affect' [2005] 159 *APAMJ* 46, 46

¹⁴⁹ P Blatchford and E Baines, *A follow up national survey of breaktimes in primary and secondary schools*, (Nuffield Foundation, 2006)

¹⁵⁰ GC17 para.42

¹⁵¹ *Ibid*

¹⁵² *Ibid*

¹⁵³ *Ibid*

music lessons. These activities affect the 'scholarisation of childhood' with a focus on learning and achievement tipping over into all aspects of children's lives.¹⁵⁴ Free time is 'instrumentalised' for learning rather than used for play.¹⁵⁵ Whilst activities such as competitive sports are seen as play, due to the fact that they are "played", they are 'rarely conducted playfully'.¹⁵⁶ They are characterised by strict rules, adult supervision and competition, a feature connected to anxiety and self-esteem problems as children feel pressured to succeed and perform.¹⁵⁷

Related to the 'scholarisation of childhood' is the concept of 'backseat' children.¹⁵⁸ These children are chauffeured by parents to school, extra-curricular clubs and to adult-organized leisure and cultural outings such as trips to the cinema, museum or zoo.¹⁵⁹ Children are given these opportunities due to parental fear of allowing children to play alone outside, an attempt to compensate for the lack of outdoor play, a 'feeling of urgency to intervene to a high degree in children's free time', or a desire for children to have a 'good start' or 'edge' by obtaining cultural and social capital.¹⁶⁰ These children may appreciate this varied leisure life, but research suggests that many yearn for more unstructured free time.¹⁶¹ Through requiring rigid time-tables and 'bubble-wrapping' children, parents are hampering children's ability to 'build the resilience and skills critical to be competent

¹⁵⁴ Mayall (n41) 250

¹⁵⁵ M Oksnes, 'The carnival goes on and on! Children's perceptions of their leisure time and play in SFO' [2008] 27 *LeisStud* 149

¹⁵⁶ Bateson and Martin (n27) 1

¹⁵⁷ T Scanlan and M Passer, 'Factors related to competitive stress among male young sport participations' [1978] 10 *MedSci Sports* 103. The Committee calls for States to 'monitor the situation of children taking part in competitive' sport (ComRC, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Ecuador', (26 October 2017) CRC/C/ECU/CO/5-6)

¹⁵⁸ Karsten (n14) 286-9

¹⁵⁹ Malone (n67) 516; Karsten (n14) 286-7

¹⁶⁰ Karsten (n14) 286-9; Malone (n67) 516

¹⁶¹ Karsten (n14) 286; L Houlihan, 'Being young is not child's play: kids are richer but lack life skills' *Daily Telegraph*, Sydney (7 October 2005), as cited in Malone (n67) 519

and independent environmental users'.¹⁶² Children are thus restricted in their ability to become environmentally competent – incorporating both the ability to 'read the environment' (physical, social and cultural) and 'to manage and negotiate the environment to function in it'¹⁶³ – skills crucial for safety and social development. Increased time 'ferried by car from one activity to another' disrupts children's 'sense of time and space'.¹⁶⁴ Scientific research suggests that humans are losing the ability to internally navigate due in part to time spent in cars, and the reliance on GPS systems, and that time outdoors is required to develop this skill.¹⁶⁵

4. Humanitarian and Development Programmes

The Committee raises the '[n]eglect of article 31 in development programmes' as a key challenge to be addressed for the realisation of Article 31.¹⁶⁶ Two groups of children given particular attention in this discussion are '[c]hildren in situations of conflict, humanitarian and natural disasters' and '[c]hildren living in poverty'.¹⁶⁷ Related to traumas arising from situations of conflict and humanitarian and natural disasters, are personal traumas from accidents or abuse. These situations 'are all too common in the world today'.¹⁶⁸ They affect the child's experience of play due to a lack of 'physical and psychological' space,¹⁶⁹ or through altering the play experience as somewhere for trauma and distress to be played out.¹⁷⁰ Whilst children may continue to play in harsh conditions, return to 'more peaceful play activities is unlikely without careful help and recognition of how much children have

¹⁶² Malone (n67) 513

¹⁶³ Ibid 524

¹⁶⁴ Valentine (n14) 212

¹⁶⁵ J Huth, *The Lost Art of Finding Our Way* (HUP, 2013) 3

¹⁶⁶ GC17 para.43

¹⁶⁷ Ibid paras.49 and 53

¹⁶⁸ Y Ogawa, 'Childhood Trauma and Play Therapy Intervention for Traumatized Children' [2004] 32 *JPC:PractTheoryRes* 19, 19

¹⁶⁹ T Hyder, *War, Conflict and Play* (OU Press, 2004) 97

¹⁷⁰ J Lindon, *Understanding Children's Play* (Nelson Thornes, 2001) 18, 35

to cope with emotionally'.¹⁷¹ Shelby and Tredinnick found that child survivors of Hurricane Andrew in 1993 faced considerable trauma, and highlighted the importance of play in enabling children to express and resolve aspects of their trauma and fear.¹⁷² Goleman, exploring the effect of a shooting in a school playground in California in 1989, found that children showed many long-term effects from their experiences of the attack, including re-enactment in play.¹⁷³

4.1. Crises

One way in which war, disaster and extreme poverty affects play is through disrupting 'material aspects of a community, its institutions and services'.¹⁷⁴ This influences the ways in which families and individuals are able to meet immediate needs, such as healthcare, food, water and safety, and results in a diversion of focus from 'growing children' and their emotional needs.¹⁷⁵ Activities such as play become forgotten, reinforcing the right's status as luxury. The Committee criticises the tendency for humanitarian and development programmes to neglect Article 31 rights, including the right to play. It states that '[e]arly childhood care and development work in many countries focuses exclusively on issues of child survival with no attention paid to conditions that enable children to thrive',¹⁷⁶ symptomatic of the perception of play as a luxury right. Development programmes 'often only deal with nutrition, immunization and preschool education with little or no emphasis on play', whilst in situations of conflict or disaster Article 31 rights 'are often given lower priority... than the provision of food, shelter and

¹⁷¹ Ibid

¹⁷² J Shelby and M Tredinnick, 'Crisis Intervention with Survivors of Natural Disaster: Lessons from Hurricane Andrew' [1995] 73 *JCounsDev* 491

¹⁷³ D Goleman, *Emotional Intelligence* (Bloomsbury, 1996)

¹⁷⁴ Hyder (n169) 6

¹⁷⁵ Ibid

¹⁷⁶ GC17 para.43

medicines'.¹⁷⁷ This presents a challenge for states in receipt of support from humanitarian and development programmes to ensure that the realisation of the right to play is supported.

Situations of war and conflict often find children used as fighters, resulting in a loss of childhood and 'space or time for play'.¹⁷⁸ The use of children in war and conflict is not a modern or localised phenomenon. There were almost 5000 soldiers in the British Army younger than eighteen years of age in 2000.¹⁷⁹ It is currently estimated that 'there are at least 300,000 child soldiers or guerrillas, boys as well as girls', often as young as seven years of age, taking an active role in violence and often suffering sexual abuse.¹⁸⁰ Lindon described these children as having 'lost their childhood years. Even if they are found and removed from the war zone, their emotional adjustment can be extremely difficult'.¹⁸¹ Children not directly involved in warfare are still affected, with many 'more aware of dramatic local and national conflict than adults believe'.¹⁸²

War and conflict often result in displacement. The UN has emphasised the need to attempt to protect the right to play for refugees in *Refugee Children: Guidelines on Protection and Care*, noting challenges faced by refugee children to enjoy their right to play.¹⁸³ Not only do these children face challenges of reduced access to infrastructure and facilities offering healthcare, food, water and security, but they have also experienced 'scenes of violence and traumatic loss' and have had 'their homes, family life and

¹⁷⁷ Ibid paras.43 and 53

¹⁷⁸ Lindon (n170) 17-18

¹⁷⁹ Ibid 17

¹⁸⁰ Ibid 17-18

¹⁸¹ Ibid 18

¹⁸² Ibid 16

¹⁸³ UNICEF, 'Refugee Children: Guidelines on Protection and Care' (UNICEF, 1998) <<http://www.unhcr.org/3b84c6c67.html>>accessed June 2020

childhood destroyed by the effects of war'.¹⁸⁴ Displacement, and the lack of a home or steady situation, places great challenges on the ability of children to relax and experience the joy of engaging in play. Refugee and asylum-seeking children receive special protections under Article 22 CRC, but require additional measures in realising their right to play.¹⁸⁵ The Committee notes that they may face additional inequalities in accessing play facilities due to language barriers, bullying, or discrimination in schools and in wider contexts, affecting their play in public spaces.¹⁸⁶ They may face specific challenges in institutions such as detention centres, as discussed in Section 2.2.¹⁸⁷ Realising the right to play remains a challenge even after children are removed from conflict areas.

The Committee suggests that through providing specific settings for play, monitors can 'identify children suffering from the harmful impact of conflict'.¹⁸⁸ It highlights the therapeutic role of play in recovering the sense of normality and joy after 'loss, dislocation and trauma', through helping them 'overcome emotional pain and regain control over their lives', restore identity and offer them the experience of fun and enjoyment.¹⁸⁹ The therapeutic function of play has been explored academically. Loughry et al. found that Palestinian children in periods of conflict who engaged in play activity showed visible improvement in their emotional well-being.¹⁹⁰ As seen in Chapter 2, 'free play has the potential to improve many aspects of emotional well-being such as minimising anxiety, depression, aggression,

¹⁸⁴ Lindon (n170) 18

¹⁸⁵ Article 22 UNCRC; GC17 paras.24 and 53

¹⁸⁶ For example: ComRC, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of India' (7 July 2014) CRC/C/IND/CO/3-4, para.77; ComRC, 'Concluding Observations: Republic of Korea' (2 February 2012) CRC/C/KOR/CO/3-4, para.62; Section 2.3

¹⁸⁷ CRC/C/IND/CO/3-4 (Ibid), para.77

¹⁸⁸ GC17 para.53

¹⁸⁹ Ibid

¹⁹⁰ M Loughry et al., 'The Impact of Structured Activities among Palestinian Children in a Time of Conflict' [2006] 47 *JChildPsychol Psychiatry* 1211

and sleep problems', many of which are symptoms of trauma.¹⁹¹ Play can assist children in difficult circumstances is through creating a 'parallel world' with less fear and a space for 'order and predictability through repetitive play patterns'.¹⁹² Whilst the therapeutic function of play is widely acknowledged and implemented in child therapy as a means for coping with or exploring overwhelming feelings, 'play re-enactment does not necessarily resolve the distress',¹⁹³ thus the impacts of conflict and trauma may affect children long-term.

4.2. Poverty

The way in which poverty presents challenges for the realisation of the right to play has already been addressed,¹⁹⁴ but it warrants further focused attention as it presents significant and varying challenges to the enjoyment of play including for those in extreme poverty who may face malnutrition and poor health, or the need to look for work themselves. The Committee argues that '[l]ack of access to facilities, inability to afford the costs of participation, dangerous and neglected neighbourhoods, the necessity to work and a sense of powerlessness and marginalisation all serve to exclude the poorest children' from realising the right to play.¹⁹⁵ The Committee highlights risks to health and safety outside when home environments 'provide little or no scope for play', and emphasises that these challenges are made worse for children without parents or street children as they are 'commonly actively excluded from city parks and playgrounds'.¹⁹⁶ Whilst children in these contexts may 'use their own creativity to utilize the informal

¹⁹¹ Burdette and Whitaker (n148) 48

¹⁹² S Lester and W Russell, 'Children's right to play: An examination of the importance of play in the lives of children worldwide' Working Paper No.57, Early Childhood Development (Bernard van Leer Foundation, 2010) 11

¹⁹³ Lindon (n170) 35

¹⁹⁴ Section 2.1-2; 4.1

¹⁹⁵ GC17 para.49

¹⁹⁶ Ibid

setting of the streets for play opportunities', the risks of unsafe outdoor areas are compounded.¹⁹⁷ The Committee's recommendations focus on providing affordable, 'safe, accessible, inclusive and smoking-free spaces for play and socialization, and public transport to access such spaces'.¹⁹⁸

The impact of malnutrition on play has been studied both in animal sciences and childhood studies. Studies have found that well-fed young mammals play more than those with less access to food.¹⁹⁹ Studies on children have similar findings. Graves examined play activity with 35 boys in West-Bengal, of whom 19 were considered well-nourished and 16 undernourished.²⁰⁰ Graves found that the undernourished children 'showed less vigour' in their play than the well-nourished children.²⁰¹ Sigman et al. examined the relationship between food intake and play frequency.²⁰² Their study, involving 110 Kenyan toddlers, found a significant correlation between food intake and the amount of play children engaged in, including when family background and home rearing variables were held constant.²⁰³

UNICEF estimates that 663 million children live in poverty.²⁰⁴ Wealthier Western states are not exempt from this issue. A UN Special Rapporteur for Poverty report suggests that 'almost one in every two children' in Britain are poor, describing it as 'not just a disgrace, but a social calamity and an

¹⁹⁷ Ibid; ComRC, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Bulgaria' (21 November 2016) CRC/C/BGR/CO/3-5, para.23

¹⁹⁸ For example: CRC/C/GBR/CO/5 (n126), para.74(b); ComRC, 'Concluding Observations on the third to fifth periodic reports of Latvia' (14 March 2016) CRC/C/LVA/CO/3-5, paras.58-9

¹⁹⁹ Bateson and Martin (n27) 19

²⁰⁰ P Graves, 'Nutrition, infant behaviour, and maternal characteristics: a pilot study in West Bengal, India' [1976] 29 *AmJClinNutr* 305, 307 (Sample size for the girls was considered inadequate for conclusive findings)

²⁰¹ Ibid 305

²⁰² M Sigman et al., 'Relationship between nutrition and development in Kenyan toddlers' [1989] 115 *JPedia* 357

²⁰³ Ibid

²⁰⁴ 'Child Poverty' (UNICEF) <<https://www.unicef.org/social-policy/child-poverty>> accessed June2020

economic disaster, all rolled into one'.²⁰⁵ In 2017 the Institute of Fiscal Studies projected an increase in UK child poverty of almost seven percentage points from 2015-6 by 2021-22.²⁰⁶ The rise does not match expectations based on population growth with 'the total number of children [since 2011/12] risen by 3%, while the number of children in poverty has risen by 15%'.²⁰⁷ These statistics accompany warnings concerning significant numbers of children impacted by food poverty and hunger.²⁰⁸ 'Children are disproportionately represented amongst the poor', defined 'in absolute or relative terms',²⁰⁹ and are 'more vulnerable to its effects'.²¹⁰ A reduction in play caused by poverty compounds other problems; 'children's play happens only when basic short-term needs have been satisfied and the individual is free from stress'.²¹¹ Whilst engaging in 'play will not alleviate poverty and hardships' it can 'help to act as a buffer against associated stress'.²¹²

Another issue relating to child poverty is child labour. The Committee recognises that across many countries children engage in forms of work, arduous and dangerous, as domestic workers, or 'in non-hazardous occupations with their families'.²¹³ These children require unique support to realise their right to play as they may find themselves with reduced time and energy for play, or facing additional challenges due to having worked in

²⁰⁵ OHCHR, 'Statement on Visit to the United Kingdom by Special Rapporteur on Extreme Poverty and Human Rights' (16 November 2019), 1
<https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf>accessed June2020

²⁰⁶ A Hood and T Waters, 'Living Standards, Poverty and Inequality in the UK: 2017-18 to 2021-22', (Institute of Fiscal Studies, 2017), 6
<<https://www.ifs.org.uk/uploads/publications/comms/R136.pdf>>accessed May 2019

²⁰⁷ H Barnard, 'UK Poverty 2018: A comprehensive analysis of poverty trends and figures' (Joseph Rowntree Foundation, 2018), 3

²⁰⁸ 'Millions of UK children are impacted by food poverty' (The Food Foundation, Sept 2018)
<<https://foodfoundation.org.uk/millions-of-uk-children-are-impacted-by-food-poverty/>>accessed April 2019

²⁰⁹ A Nolan, 'Rising to the Challenge of Child Poverty: The Role of the Courts', in G Van Bueren (ed) *Freedom from Poverty as a Human Rights: Law's Duty to the Poor*, (Vol.4, UNESCO, 2010) 230, referencing UNICEF, *Poverty Reduction Begins with Children*, (UNICEF, 2000) 41

²¹⁰ UNICEF (n204)

²¹¹ Bateson and Martin (n27) 20

²¹² Lester and Russell (n192) 47

²¹³ GC17 para.29

hazardous environments.²¹⁴ The topic of working children is contentious, and scholars have argued against conceptualising working children as ‘powerless victims of exploitative labour forces’, arguing that the wishes and views of working children contradict this discourse.²¹⁵ Nevertheless, there are considerable harms associated with children’s work, whether in the labour market or the home.²¹⁶

Boyden et al. discovered that children facing poverty rarely had opportunities for play.²¹⁷ This was more acutely experienced by girls who ‘work[ed] harder and for longer hours than boys’ and faced additional challenges of adults resistance to girls’ equality with boys in play.²¹⁸ They found an exception for children under four-years-old, who were ‘*indulged* and allowed to play’.²¹⁹ In all societies, ‘when families need children to sustain the household income, they tend to become involved’ from an early age, whether through paid employment, in supporting family enterprise, or in providing childcare for younger children.²²⁰ Whilst commonplace for children to engage in basic family chores, working children ‘have neither the energy nor the spare time to be playful, when their waking hours are filled with responsibilities’.²²¹ With regards to child labour, particularly domestic

²¹⁴ Ibid; Landon (n170) 17; J Boyden et al., *Children and Poverty: Voices of Children: Experiences and Perceptions from Belarus, Bolivia, India, Kenya and Sierra Leone* (Christian Children’s Fund, 2003)

²¹⁵ T O’Neill, ‘Young carpet weavers on the rights threshold: protection or practical self-determination?’, in K Hanson and O Nieuwenhuys (eds) *Reconceptualising children’s rights in international development: Living rights, social justice, translations* (CUP, 2012) 93, citing B White, ‘Defining the Intolerable: Child work, global standards and cultural relativism’ [1999] 6 *Childhood* 113 and M Woodhead, ‘Combating Child Labour: Listen to what the children say’ [1999] 6 *Childhood* 27

²¹⁶ J French, ‘Children’s Labor Market Involvement, Household work and Welfare: A Brazilian Case Study’ [2010] 92 *JBusEthics* 63

²¹⁷ Boyden et al. (n214)

²¹⁸ Ibid 33

²¹⁹ Ibid 83 (emphasis added to demonstrate perception of play as a luxury/indulgence)

²²⁰ Landon (n170) 17

²²¹ Ibid

labour, the Committee states that girls require additional measures to ensure their realisation of the right to play.²²²

5. The Girl Child

The Committee highlights several ways in which girls can face diminished opportunities to enjoy their right to play. These include: 'significant burdens of domestic responsibilities and sibling and family care'; 'protective concerns on the part of parents'; 'lack of appropriate facilities'; and 'cultural assumptions imposing limitations on the expectations and behaviour of girls', including gender differentiation in expectations of play and in games or toys.²²³ The International Labour Organisation suggests that global child labour figures may underrepresent girls as domestic work is less visible and household chores are not considered in estimates.²²⁴

In Concluding Observations, the Committee explicitly refers to girls and the realisation of their right to play on five occasions. In its 2016 Concluding Observations on Zambia, the Committee requests that the state ensure that girls 'in particular' have time for play and free access to playgrounds.²²⁵ This echoes statements reflecting on burdens of domestic and caring responsibilities for girls as activities that may hamper girls' time for play, and a 'lack of appropriate facilities' for play.²²⁶ The 2016 Concluding Observations on Iran recommend that the state 'stop discriminating against girls in access' to the right to play, following bans on attendance of sports stadiums and 'the enforcement of the hijab on girls from the age of 7

²²² GC17 para.48

²²³ Ibid. The latter is discussed in Section 5

²²⁴ 'Global Estimates of Child Labour: Results and Trend, 2012-16', (ILO, 2017) 14

²²⁵ ComRC, 'Concluding Observations on the Combined Second to Fourth Periodic Reports of Zambia' (14 March 2016) CRC/C/ZMB/CO/2-4, para.54(g)

²²⁶ GC17 para.48

years'.²²⁷ These comments relate to 'cultural assumptions imposing limitations on the expectations and behaviour of girls', and show the need to explore how best to implement the right to play across cultures, and to ensure that cultural differences do not hamper the girl child's enjoyment of the right to play.²²⁸

The 2015 Concluding Observations on Honduras state that places available for recreation and play 'do not have a gender perspective and often exclude girls'.²²⁹ This suggests a 'lack of appropriate facilities' for play and cultural assumptions, or perhaps 'protective concerns on the part of parents', that have led to a habit of excluding girls from play spaces and activities.²³⁰ A request to take into consideration a 'gender perspective' is made in the 2014 Concluding Observations on Venezuela, in relation to implementing policies on play.²³¹ This should involve reflection on factors hampering girls' opportunities for play and implementing measures to reduce them. Such measures should not hamper boys' right to play but may require additional measures or resources.²³² In its 2020 Concluding Observations on Micronesia, the Committee makes explicit reference to ensuring 'household responsibilities' do not hinder article 31 rights.²³³

²²⁷ ComRC, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of the Islamic Republic of Iran' (14 March 2016) CRC/C/IRN/CO/3-4, paras.79-80

²²⁸ GC17 para.48

²²⁹ ComRC, 'Concluding Observations on the combined fourth and fifth periodic reports of Honduras' (3 July 2015) CRC/C/HND/CO/4-5, para.73

²³⁰ GC17 para.48

²³¹ ComRC, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of the Bolivarian Republic of Venezuela' (13 October 2014) CRC/C/VEN/CO/3-5, para.67(a)

²³² The selection of comments in the Committee's Concluding Observations all refer to the girl child specifically, they do not include comments relating to 'children outside the education system', or children from poor socioeconomic backgrounds etc. which may disproportionately include girls.

²³³ CRC/C/FSM/CO/2 (n131) para.63(b)

6. Technology and Play

The final challenge raised by the Committee is that of the '[g]rowing role of electronic media'.²³⁴ There is a broad range of perspectives associated with children's use of technology, with some describing it as 'the plug-in drug'²³⁵ and others arguing that 'television is good for your kids'.²³⁶ This discussion sheds some light upon this debate, focusing attention on the Committee's concerns and on the right to play.

An area impacted by technology that is particularly relevant to children is education. Technology offers many opportunities for children with disabilities to access education.²³⁷ It has been seen to 'boost child interest in STEM'²³⁸ and has assisted children's learning of mathematics and languages.²³⁹ It is useful for access to education for minority children or those in developing countries,²⁴⁰ and 'is increasingly recognized as an integral learning tool for promoting the social, linguistic, and cognitive development of young children'.²⁴¹ However, questions remain as to the scope of which technology in education can be presented in a purely positive light, with some arguing this is 'exaggerated'.²⁴² The Committee acknowledges the potentials of technology including as a platform for children's play, and it is aware that

²³⁴ GC17 paras.45-46

²³⁵ M Winn, *The Plug-in Drug* (Bantam Books, 1977)

²³⁶ M Davies, *Television is Good for Your Kids* (Hilary Shipman, 1989)

²³⁷ J Copley and J Ziviani, 'Barriers to the use of assistive technology for children with multiple disabilities' [2004] 11 *OccupTherInt* 229

²³⁸ M Bond, O Zawacki-Richter and M Nichols, 'Revisiting five decades of educational technology research: A content and authorship analysis of the British Journal of Educational Technology' [2019] 50 *BJET* 12, 33; T Lewis, 'Creativity in technology education: providing children with glimpses of their inventive potential' [2009] 19 *ITDE* 255

²³⁹ S Banerjee et al., 'Can Digital Technologies Play a Role in Improving Children's Learning Outcomes in India?' [2017] 3 *JDP* 55

²⁴⁰ P Kim, T Miranda and C Olaciregui, 'Pocket School: Exploring mobile technology as a sustainable literacy education option for underserved indigenous children in Latin America' [2008] 28 *IntJEducDev* 435

²⁴¹ L Couse and D Chen, 'A Tablet Computer for Young Children? Exploring Its Viability for Early Childhood Education' [2010] 43 *JRTE* 75, 75; Lewis (n238)

²⁴² N Selwyn, 'Minding our language: why education and technology is full of bullshit... and what might be done about it' [2015] 9 *LMT* 1; I Verenikina et al., 'Digital Play: Exploring young children's perspectives on applications designed for preschoolers' [2016] 6 *GlobStudChild* 388, 394

the presence of such media is 'emerging as a central dimension of children's daily reality'.²⁴³

The use of technology in play and children's free-time has become commonplace with children growing up in 'media-rich homes'.²⁴⁴ Data suggest that 93% of 9-16 year olds go online at least weekly, 60% every day or almost every day, with this rising to 80% for 15-16 year olds.²⁴⁵ Children use the internet for 'a range of diverse' activities, including 83% for playing games.²⁴⁶ It is important that children have access to technology for play and that states 'take all necessary measures to ensure equal opportunity for all children' in accessing technology for play, in line with the Convention's general principles.²⁴⁷ Equality in access to technology is particularly important to avoid a 'digital divide' between the wealthy and the poor.²⁴⁸ Nevertheless, concerns surrounding children's use of technology generate additional challenges for protecting the right to play.

6.1. Physical and Mental Health – Time and Space for Play

The Committee argues that some aspects of technology and electronic media pose 'significant potential risk and harm to children'.²⁴⁹ One concern raised within the literature is how much time children spend watching television or on screens, with data suggesting that children are now spending several hours a day watching television or sitting with an electronic screen, with

²⁴³ GC17 para.45

²⁴⁴ S Chaudron, *Young Children (0-8) and Digital Technology: A qualitative exploratory study across seven countries* (European Commission Joint Research Centre, 2015) 7
<[http://www.lse.ac.uk/media@lse/research/ToddlersAndTablets/RelevantPublications/Young-Children-\(0-8\)-and-Digital-Technology.pdf](http://www.lse.ac.uk/media@lse/research/ToddlersAndTablets/RelevantPublications/Young-Children-(0-8)-and-Digital-Technology.pdf)> accessed April 2019

²⁴⁵ S Livingstone et al., *Risks and safety on the internet: the perspective of European children: full findings and policy implications from the EU Kids Online survey of 9-16 year olds and their parents in 25 countries* (EU Kids Online Network, 2011) 5

²⁴⁶ Ibid (It is likely that these figures are higher, almost ten years later.)

²⁴⁷ GC17 para.45

²⁴⁸ S Livingstone and E Helsper, 'Gradations in digital inclusion: children, young people and the digital divide' [2007] 9 *NewMediaSoc* 671, 671

²⁴⁹ GC17 para.46 citing UNICEF, *Child Safety Online: Global Challenges and Strategies. Technical Report* (Innocenti Research Centre, 2012); GC20 para.48

estimates ranging from averages of 2 hours to 5.8 hours a day.²⁵⁰ Regular use of screens is linked to 'a plethora of physical, academic, and behavioural problems'.²⁵¹ Numerous studies have demonstrated the calorific²⁵² and body mass index (BMI)²⁵³ benefits of reduced screen-time, and the direct correlation between screen-time and active or outdoor play.²⁵⁴ Technology use impacts upon children's physical health due to a decrease in time outdoors and prevalence of sedentary behaviour.²⁵⁵

Time watching television or playing with gaming technology significantly affects time for active play. A survey found that whilst children reported playing most commonly with technology, they described a desire and preference for more time engaging in 'traditional active play, such as riding bikes or skateboards'.²⁵⁶ This suggests that spending free time engaging with technology for the purposes of play may not always be a child's first choice, and that time spent engaging with technology is influenced by parental 'anxieties about safety [of outdoor play], and dependence on television and digital media' to entertain their children.²⁵⁷

The Committee warns against excessive use or a 'dependence on screen-related activities' due to a concern of the association of such activities with 'reduced levels of physical activity among children, poor sleep patterns,

²⁵⁰ E Vandewater et al., 'Digital Childhood: Electronic Media and Technology Use Among Infants, Toddlers and Preschoolers' [2007] 119 *Pediatrics* e1006; I Janssen, 'Active play: An important physical activity strategy in the fight against childhood obesity' [2014] 105 *CanJPublicHealth* e22, e26

²⁵¹ A Jordan et al., 'Reducing Children's Television-Viewing Time: A Qualitative Study of Parents and their Children' [2006] 118 *Pediatrics* e1303

²⁵² Janssen (n250) e25-6 (1hr of screen-time replaced with active play burns an additional 49kcal, and children with a limit of 2hrs screen-time a day expend an additional 186kcal)

²⁵³ Page et al. (n26) 8

²⁵⁴ Burdette and Whitaker (n148) 46; Page et al. (n26) 8

²⁵⁵ Wyver et al. (n17) 269; Brussoni et al. (n16) 3137; McFarland and Laird (n21) 159; S Moss, *Natural Childhood* (National Trust, 2012), 4

<<https://nt.global.ssl.fastly.net/documents/read-our-natural-childhood-report.pdf>> accessed March 2019; Chapter 2 on increases in childhood obesity.

²⁵⁶ Gleave and Cole-Hamilton (n144) 19

²⁵⁷ Bateson and Martin (n27) 98

growing levels of obesity and other related illnesses'.²⁵⁸ The WHO has recommended limiting screen-time to 0 minutes for children under one year, and a maximum of 60 minutes for children up to the age of 5 (the upper age limit of the study).²⁵⁹

Whilst data surrounding physical health impacts of technology are clear, more nuanced debate surrounds technology and mental health. Adolescents' use of social media has presented a plethora of mixed findings. Some emphasise the benefits of internet use for social connectivity and relationship building,²⁶⁰ whilst others highlight the potential for social media in providing an outlet for vulnerable children,²⁶¹ as a place of support,²⁶² and the benefits of social media in addressing loneliness and depression and increasing self-esteem.²⁶³ Research suggests that social media and online use negatively impacts loneliness²⁶⁴ and adolescents' stress levels.²⁶⁵ Other research argues that there is 'a small significant negative association between technology use and well-being, which – when compared with other activities in adolescent's life – is miniscule'.²⁶⁶ These studies demonstrate a confusion about the relationship between internet use and children and adolescents' mental wellbeing and psychosocial state. Research does

²⁵⁸ GC17 para.46

²⁵⁹ WHO, 'World Health Organisation Guidelines on Physical Activity, Sedentary Behaviour and Sleep for Children Under 5 Years of Age' (WHO, 2019)

²⁶⁰ R Grieve et al., 'Face-to-face or Facebook: Can social connectedness be derived online?' [2013] 29 *ComputHumBehav* 604; Chaudron (n244)

²⁶¹ L Bonetti et al., 'The Relationship of Loneliness and Social Anxiety with Children's and Adolescents' Online Communication' (MThesis, Queensland University of Technology, 2009) iv; J Morahan-Martin and P Schumacher, 'Loneliness and social uses of the Internet' [2003] 19 *ComputHumBehav* 659

²⁶² D Luxton, J June and J Fairall, 'Social Media and Suicide: A Public Health Perspective' [2012] 102 *AmJPublicHealth* s195

²⁶³ L Shaw and L Gant, 'In Defense of the Internet: The Relationship between Internet Communication and Depression, Loneliness, Self-Esteem, and Perceived Social Support' [2002] 5 *CyberpsycholBehav* 157

²⁶⁴ M Savci and F Aysan, 'Relationship between Impulsivity, Social Media Usage and Loneliness' [2016] 5 *EDUPIJ* 106; E Moody, 'Internet Use and Its Relationship to Loneliness' [2001] 4 *CyberpsycholBehav* 393, 393

²⁶⁵ I Beyens, E Frison and S Eggermont, "'I don't want to miss a thing": Adolescents' fear of missing out and its relationship to adolescents' social needs, Facebook use, and Facebook related stress' [2016] 64 *ComputHumBehav* 1

²⁶⁶ A Orben and A Przybylski, 'Screens, Teens, and Psychological Well-Being: Evidence from Three Time-Use-Diary Studies' [2019] 30 *Psychological Science* 682, 693

suggest that excessive screen-time is detrimental to mental health,²⁶⁷ and that children are particularly at risk of internet addiction.²⁶⁸

The potential risks of online use for children's mental health are considerable, with several adolescent suicides linked to social media usage. The extensive presence of online 'suicide challenges' aimed at young people and children, including hidden in video content for under 5s, such as Blue Whale and Momo are particularly concerning.²⁶⁹ The link between children's internet use and suicide and self-harm has been emphasised in a number of papers, leading to calls for policing of the internet and parental limits on children's access to technology.²⁷⁰ This impacts upon the right to play as it reduces mental capacity and physical time for play. Poor mental health may also affect social relationships necessary for peer play.

6.2. Online Risks

In addition to physical and mental health risks of excessive use of technology, and their impact on the right to play, the Committee discusses dangers of 'cyberbullying, pornography and cybergrooming' exposure of children when online, particularly when internet sites and places offering computer access do not hold 'adequate restrictions to access or effective monitoring systems'.²⁷¹ Cyberbullying is potentially more damaging than

²⁶⁷ J Twenge and W Campbell, 'Associations between screen-time and lower psychological well-being among children and adolescents: Evidence from a population-based study' [2018] 12 *PrevMedRep* 271.

²⁶⁸ G Ferraro et al., 'Internet Addiction Disorder: An Italian Study' [2007] 10 *CyberpsycholBehav* 170.

²⁶⁹ R Adams, 'Social media urged to take 'moment to reflect' after girl's death' (*Guardian Online*, 30 January 2019) <<https://www.theguardian.com/media/2019/jan/30/social-media-urged-to-take-moment-to-reflect-after-girls-death>>accessed April 2019; P Southworth, 'Parents warned about 'Momo' Suicide Game on YouTube' (*The Telegraph*, 27 February 2019) <<https://www.telegraph.co.uk/news/2019/02/27/parents-warned-online-suicide-game-appearing-peppa-pig-videos/>>accessed April 2019; GC20 para.58.

²⁷⁰ K Hawton et al., 'Self-harm and suicide in adolescents' [2012] 379 *Lancet* 2373, 2378; S Lewis et al., 'Non-suicidal self-injury, youth, and the Internet: What mental health professionals need to know' [2012] 6 *CAPMH* 13, 3.

²⁷¹ GC17 para.46.

traditional bullying due to the permanent nature of online postings and an inability to escape them, as opposed to the momentary nature of spoken words.²⁷² Research suggests that adolescents are most at risk of cybergrooming due to a 'need for attention and affection', 'the emergence of a natural puberty interest in sexual topics', and an inclination of adolescents to 'behave online in a more risky way than others'.²⁷³ Girls are at greater risk.²⁷⁴

A study by Livingstone et al., involving 25,142 children aged 9-16 across 25 European countries, examined six risks facing children online: communicating online with someone the child has not previously met face-to-face (30% of 9-16 year olds); exposure to potentially harmful user-generated content (21% of 11-16 year olds); exposure to sexual images (14% of 9-16 year olds); exposure to sexual messages (15% of 11-16 year olds); a misuse of personal data (9% of 11-16 year olds); meeting people first met online (9% of 9-16 year olds); and cyberbullying (6% of 9-16 year olds).²⁷⁵ The study found that 'across all media, 23% of children have seen sexual or pornographic content in the past 12 months', with 14% online, and 2% exposed to 'violent sexual content'.²⁷⁶ These data show that the risks highlighted by the Committee are considerable and pose a threat to children playing online. Keeping children indoors to protect them from outdoor harms thus may be exposing them to other harms through excessive use and reliance on technology.

²⁷² W Cassidy, C Faucher and M Jackson, 'Cyberbullying among youth: A comprehensive review of current international research and its implications and application to policy and practice' 34 *SchoolPsychInt* 575, 580

²⁷³ S Wachs, K Wolf and P Ching-Ching, 'Cybergrooming: Risk factors, coping strategies and associations with cyberbullying' [2012] 24 *Psicothema* 628, 628 and 629

²⁷⁴ *Ibid* 629

²⁷⁵ Livingstone et al. (n245) 5 and 134

²⁷⁶ *Ibid* 6 and 52

6.3. Exposure to Violence

A further issue related to technology is that of children's exposure to violence. Research for EU Kids Online discovered that 'seeing violent or hateful content is the third most common risk' online experienced by children across Europe, with approximately a third of teenagers exposed.²⁷⁷ The Committee expresses particular concern with violent video games, stating that they appear 'to be linked to aggressive behaviour' due to their 'highly engaging and interactive' formats that 'reward violent behaviour'.²⁷⁸ These games strengthen 'negative learning' and 'contribute to reduced sensitivity' towards violence and pain.²⁷⁹

Substantial research explores the impact of violent video games on children. Studies have found an effect on young children's aggressive behaviour after playing violent or moderately violent video games, with one finding an impact after just 6 minutes of game time.²⁸⁰ Funk et al. found that 'over the long term, exposure to violent video games may be associated with lower empathy in some children, a possible indication of desensitisation', and that 'playing video games is, at the very least, unlikely to enhance moral decision making in children'.²⁸¹ The authors suggested that, whilst 'not all children who play violent video games demonstrate obvious negative impact', some children are at higher risk than others.²⁸² They emphasise that this risk may

²⁷⁷ S Livingstone and L Haddon, *EU Kids Online: final report 2009* (EU Kids Online, 2009) 16

²⁷⁸ GC17 para.46

²⁷⁹ Ibid

²⁸⁰ S Silvern and P Williamson, 'The effects of video game play on young children's aggression, fantasy and prosocial behaviour' [1987] 24 *JAppSocPsychol* 21, and A Irwin and A Gross, 'Cognitive tempo, violent video games and aggressive behaviour in young boys' [1995] 10 *J Fam Vio* 337. Both cited in J Funk et al., 'Playing violent video games, desensitization, and moral evaluation in children' [2003] 24 *JAppDevPsychol* 413, 414

²⁸¹ Funk et al. (n280) 432

²⁸² Ibid

be highest for 'those whose moral development is a work in progress or is already impaired' such as younger children or those impacted by bullying.²⁸³

A meta-analysis conducted by the American Psychological Association concluded 'that there is an effect of violent video game use on aggression... aggressive behaviour, cognitions and affect, and a decrease in positive outcomes such as pro-social behaviour, empathy, and sensitivity to aggression'.²⁸⁴ Another study, conducted by Gentile et al., examined biological impacts of video games on children, measuring cortisol levels, cardiovascular arousal and accessibility of aggressive thoughts.²⁸⁵ They found a positive relationship between violent video games and increases in the measures, when tested against children playing an 'equally exciting' nonviolent video game.²⁸⁶ Similar research has been conducted to explore the impact of exposure to violent television on children's aggressive behaviours.²⁸⁷ These findings suggest a need to address the extent to which children can be exposed to violence when engaging with digital technologies for play.

6.4. Cognitive Ability and Cultural Development

Technology impacts upon cognitive ability and cultural development. Research suggests that watching television and videos seldom realises its potential to stimulate imaginative thought, and instead is more likely to stifle

²⁸³ Ibid

²⁸⁴ S Calvert et al., 'The American Psychological Association Task Force Assessment of Violent Video Games: Science in the Service of Public Interest' [2017] 72 *AmP* 126, 141

²⁸⁵ D Gentile, P Bender and C Anderson, 'Violent video game effects on salivary cortisol, arousal, and aggressive thoughts in children' [2017] 70 *ComputHumBehav* 39

²⁸⁶ Ibid 42

²⁸⁷ L Huesmann et al., 'Longitudinal Relations Between Children's Exposure to TV Violence and their Aggressive and Violent Behaviour in Young Adulthood: 1977-1992' [2003] 39 *DevPsycho* 201; B Bushman and L Huesman, 'Short-term and Long-term Effects of Violent Media on Aggression in Children and Adults' [2006] 160 *ArchPediatrAdolescMed* 348; L Eron, 'Parent-child interaction, television violence, and aggression of children' [1982] 37 *AmP* 197; B Bushman, M Gollwitzer and C Cruz, 'There is Broad Consensus: Media Researchers Agree that Violent Media Increase Aggression in Children, and Paediatricians and Parents Concur' [2014] 4 *PsycholPopMediaCult* 200

imagination.²⁸⁸ The Committee raises concern over the impact of television on the 'loss of many childhood games, songs, rhymes traditionally transmitted from generation to generation on the street and in the playground'.²⁸⁹ This suggests that children's digital media use is separate from interaction with parents, posing questions over technology as digital babysitters and healthy parent-child attachment.²⁹⁰ It suggests that technology use impacts upon children's cultural appropriation and transmission which affects the right to play in combination with their cultural rights as it risks the loss of culturally specific play.

The Committee raises concern with mainstream television and its tendency to generate 'monocultural viewing' which can 'affirm a lower value on non-mainstream cultures',²⁹¹ and risks cultural homogenisation on a global scale.²⁹² Multicultural representation in children's television is important as children play out narratives encountered in digital media, and thus culturally rich television enables understanding of multiple cultures.²⁹³ This representation should reinforce principles of equality, with studies demonstrating that majority populations 'continue to be the predominant models in terms of numbers and the types of roles they play', and minorities are often stereotyped or in minor roles.²⁹⁴ The absence or marginalisation of

²⁸⁸ T Belton, 'Television and imagination: an investigation of the medium's influence on children's story-making' [2001] 23 *MediaCultSoc* 799

²⁸⁹ GC17 para.46

²⁹⁰ S Livingstone et al., *How parents of young children manage digital devices at home: The role of income, education and parental style* (EU Kids Online, 2015); B Zaman et al., 'A Qualitative Inquiry into the Contextualised Parental Mediation Practices of Young Children's Digital Media Use at Home' [2016] 60 *JBroadcastElectronMedia* 1; I Beyens and S Eggermont, 'Putting Young Children in Front of the Television: Antecedents and Outcomes of Parents' Use of Television as a Babysitter' [2014] 62 *CommunQ* 57

²⁹¹ GC17 para.46

²⁹² J Marsh, 'Global, Local/Public, Private: Young Children's Engagement in Digital Literacy Practices in the Home', in K Pahl and J Rowsell (eds) *Travel Notes from the New Literacy Studies: Instances of Practice* (Cromwell Press, 2006) 20-21

²⁹³ Ibid 25

²⁹⁴ H-K Bang and B Reece, 'Minorities in Children's Television Commercials: New, Improved, Stereotyped' [2005] 37 *JConsumAff* 42; J Maher et al., 'Racial Stereotypes in Children's Television Commercials' [2008] 48 *JAdvertRes* 80

minorities in television reinforces marginalisation and discrimination in play, and the inaccessibility of play spaces for minority groups.²⁹⁵

Technology offers opportunities for children to learn about cultures different to their own. As mainstream children's television displays minority cultural practices, children habituate and learn from different cultures.²⁹⁶ Online communication provides children with the opportunities to 'maintain relationships with friends and family members located in different cities or overseas'.²⁹⁷ Dezuanni and Monroy-Hernandez found online communities to support intercultural participation and understanding, with users interacting across cultures and geographic boundaries in ways that 'celebrate diversity'.²⁹⁸ Supporting cultural awareness is important for realising the right to play for minority children through increasing accessibility of play spaces to marginalised groups, and cross-cultural play.

6.5. Commercialisation and Marketisation

Commercialisation and marketisation of children's play affects children's play in two ways: it further reduces the child's access to public space due to the commercialisation and privatisation of such space, as discussed in Section 2; and it impacts upon the choice of toys and play for children.²⁹⁹ The latter relates to technology as it is primarily through technology that the commercialisation of children's toys occurs, through advertisements during

²⁹⁵ On marginalised groups, Section 2.

²⁹⁶ For example: CBeebies (BBC) programmes such as *Where in the World?* and *My World Kitchen* teach young children about cultures across the globe, whilst *Apple Tree House* displays inner city and multicultural life.

²⁹⁷ C Ergler et al., 'Digital methodologies and practices in children's geographies' [2016] 14 *ChildGeog* 129

²⁹⁸ M Dezuanni and A Monroy-Hernandez, 'Prosuming across Cultures: Youth Creating and Discussing Digital Media across Borders' [2012] 19 *Communicar* 59, 66

²⁹⁹ GC17 paras.37 and 47

children's television programming,³⁰⁰ on websites aimed at children,³⁰¹ and the use of children's television characters for marketing.

The Committee suggests that parents are increasingly 'pressured to purchase a growing number of products which may be harmful to their children's development or are antithetical to creative play' due to the attractive marketization of such toys.³⁰² Chapter 2 evidences the value of play on the development of creativity and problem solving skills and imagination. The Committee emphasises its' concern over the impact of commercialisation in fuelling the purchase of products such as those 'that promote television programmes with established characters and storylines which impede imaginative exploration; toys with microchips which render the child as a passive observer; kits with a pre-determined pattern of activity; toys that promote traditional gender stereotypes or early sexualisation of girls; [and] realistic war toys and games'.³⁰³ The fact that the Committee highlights such toys, alongside those which contain 'dangerous parts or chemicals',³⁰⁴ demonstrates the Committee's belief that children's play should be free from external pressure or constraints and should support their holistic development, and that that children should not be playing games that encourage violence and or reinforce potentially damaging gender stereotypes.

Studies show that there is a direct relationship between advertising exposure and materialism,³⁰⁵ with the impact of television advertising on children so

³⁰⁰ M Lapierre et al., 'The Effect of Advertising on Children and Adolescents' [2017] 140 *Pediatrics* s152, s152-3 state that the average child in the US sees 13000-30000 television advertisements a year.

³⁰¹ Ibid s154. They also discuss solicitation of children as peer brand ambassadors.

³⁰² GC17 para.47

³⁰³ Ibid

³⁰⁴ Ibid

³⁰⁵ M Buijzen and P Valkenburg, 'The effects of television advertising on materialism, parent-child conflict, and unhappiness: a review of research' [2003] 24 *AppDevPsychol* 437, 451

significant as to have an effect after only one exposure to an advertisement, with desire and effort to obtain a product increasing with further viewing,³⁰⁶ and decreasing with reductions in viewing.³⁰⁷ Research reveals indirect relationships between 'advertising and parent-child conflict' and 'advertising and unhappiness'.³⁰⁸

Materialism impacts the choice of children's toys and the number of ready-made toys with which children play. Sanderberg and Vuorinen describe 'a shift to a society of consumption' that is mirrored in play and play memories, with increased access and prevalence of 'ready-made toys' for young children.³⁰⁹ Whilst the latter may seem to be a positive development perhaps suggesting an increase in affordability of toys, or disposable income for families, it raises significant concerns over child development particularly in the areas of problem-solving, creativity and imagination due to the prevalence of toys and stimuli with pre-determined actions or characters. The potential threat of advertisement through technology to children is significant, with the 'ability to cope with advertising' only beginning to surface in late adolescence.³¹⁰ Advertisement of toys, and use of popular children's characters for marketing, should be managed to ensure that children are still provided with the opportunities to utilise their imagination and creativity through play.

³⁰⁶ G Gorn and M Goldberg, 'The Impact of Television Advertising on Children from Low Income Families' [1977] 4 *JConsumRes* 86

³⁰⁷ T Robinson et al., 'Effects of Reducing Television Viewing on Children's Requests for Toys: A Randomized Controlled Trial' [2001] 22 *JDevBehavPediatrics* 180 and 182

³⁰⁸ M Buijzen and P Valkenburg, 'The Unintended Effects of Television Advertising: A parent-child survey' [2003] 30 *CommRes* 483, 500

³⁰⁹ A Sandberg and T Vuorinen, 'Dimensions of childhood play and toys' [2008] 32 *Asia-Pac JTeachEdu* 135, 142

³¹⁰ Lapierre et al (n300) s154

7. Conclusion - The Lack of Recognition of the Importance of the Right to Play

This chapter has provided a thorough exploration of the challenges facing the realisation of the right to play highlighted by the Committee. The only challenge remaining to be explored is that of the lack of recognition of the importance of the right to play. The lack of recognition of the importance of the right to play is evident in and underpins all the challenges already discussed.

The prevalence of issues pertaining to the lack of safe space for play and its negative side-effects, including obesity and mental health concerns, demonstrates the pervasiveness of a lack of recognition of the importance of play for children in urban planning and by parents and the broader community. The pressures on children to achieve at ever younger ages, over-filled schedules for children, and the emergence of a 'backseat generation'³¹¹ evidence a lack of recognition of the importance and nature of play amongst policy makers setting education standards and requirements, and by parents spending increasing time, energy and money on adult-proscribed leisure, extra-curricular and cultural activities that hinder children's opportunity to play freely. These can severely hamper the realisation of the right to play. Policymakers, parents, and extra-curricular providers must ensure children are afforded the time and space to engage in free play for its own ends. Key to play is voluntarism and freedom. The section on humanitarian and development programmes similarly reveals a lack of recognition of the value and nature of the right to play, due to the tendency of the right to be ignored in responses to these situations whilst

³¹¹ Karsten (n14) 286-9

education, healthcare and food remain the primary foci of response measures.

The WHO states that '[l]ifestyle behaviours developed early in life can influence physical activity levels and patterns throughout the life course'.³¹² The WHO suggest 'that 23% of adults and 80% of adolescents are not sufficiently active'.³¹³ Such data indicates that excessive technology use is prevalent, and thus that a lack of recognition of the importance and nature of play is prominent. Use of technology for play threatens the very purposes and benefits of play. Through play children are primarily creators. With technology there is a very real risk that children go from creators to consumers. Excessive use of technology crowds out much needed time for boredom, imagination, creativity and free play.

Chapter 2 evidenced the vital role of play in children's holistic development. Taken in conjunction with this chapter, it is clear that the multifaceted challenges facing the implementation, realisation and enjoyment of the right to play due to a lack of recognition of the importance and nature of play pose considerable risks to children. The next chapter examines the legal history of the right to play in order to understand the *raison d'être* for the right to play and the Committee's approach to the right.

³¹² WHO (n259) 1

³¹³ Ibid

Chapter 4: The Legal History of the Right to Play

1. Introduction

This chapter examines the legal history of the United Nations Convention on the Rights of the Child's (CRC or Convention) provision of the right to play.¹ It begins by locating the right to play in the context of general international human rights law, and international children's rights law. It analyses discussions pertaining to the right to play in the *travaux préparatoires* of both the Declaration of the Rights of the Child (Declaration) and the Convention. This analysis sheds light on the legal history of the right to play and begins to illustrate its relationship with other Convention rights. The chapter then examines the recent history of the right to play by considering the work of the Committee on the Rights of the Child (Committee) and assessing its approach to, and understanding of, the right to play. It examines three key forms of Committee output: Concluding Observations, General Comments and Days of General Discussion.

Of nine core international human rights treaties, only two refer to the right to play: the 1989 United Nations Convention on the Rights of the Child (CRC); and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).² Both treaties refer to play as a child-specific right. The inclusion of the right to play in the CRPD followed that of the CRC. In general human rights law the provision closest in similarity to Article 31 and the right to play is the provision for 'rest, leisure, and reasonable limitation of working hours and periodic holidays with pay' in the 1966 International Covenant on

¹ Article 31(1) UNCRC

² Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (adopted 30 March 2007, entered into force 3 May 2008) (CRPD), Article 30(5)(d)

Economic, Social and Cultural Rights (ICESCR),³ and the provision for equal 'weekly rest, holidays with pay' to nationals of the state for migrant workers in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).⁴ While general human rights law provides for rights to rest and leisure, the right to play is unique to children.

The CRC was adopted by the United Nations General Assembly on 20 November 1989 and entered into force on 2 September 1990. The CRC has 196 States parties and one signatory, the United States of America. It has reached almost universal ratification and has the largest ratification of any human rights treaty. The rights provided in the CRC supplement and support the rights in general human rights treaties, and are to be read in conjunction with other treaties providing rights for children.⁵ The right to play is found in Article 31(1) CRC:

States parties recognise 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

The CRC is a living document and requires that the interpretation of its provisions be continually reviewed in line with a progressive reading of human rights.⁶ The Committee on the Rights of the Child plays a vital role in interpreting the CRC.

³ International Convention on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1966) 993 UNTS 3 (ICESCR) Article 7(d)

⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, UN Doc. A/RES/45/158 (adopted 18 December 1990, entered into force 1 July 2003) (ICMW) Article 25(1)(a)

⁵ Preamble UNCRC; S Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Nijhoff, 1999) 2

⁶ K Mahgoub, *The International Law on the Right of the Child to Survival and Development* (Intersentia, 2006) 1; C Blake, 'Normative Instruments in International Human Rights Law: Locating the General Comment' (Centre for Human Rights and Global Justice Working Paper,

2. Travaux Préparatoires

In celebrating the twentieth anniversary of the 1959 Declaration of the Rights of the Child, the United Nations General Assembly declared 1979 the 'International Year of the Child'.⁷ The Resolution called for UN agencies, governments and non-governmental organisations to enhance awareness of children's needs, provide a framework for advocacy, and for governments to 'expand their efforts at the national and community levels to provide lasting improvements in the well-being of their children'.⁸ Poland saw this as an opportunity to propose the drafting of a Convention on the Rights of the Child, submitting a Draft Convention to the United Nations Commission on Human Rights in 1978 along with the request to include the Question of a Convention on the Rights of the Child during the 34th session of the Commission.⁹

The "preparatory work", or *travaux préparatoires*, of a treaty are worth studying as they can 'serve as an aid to interpretation of the treaty'.¹⁰ Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT) outline the rules of interpretation for treaties. Article 31(1) states that treaties should be interpreted 'in good faith', 'in accordance with the ordinary meaning', 'in their context', and 'in the light of its object and purpose'.¹¹ Article 32 states that 'recourse may be had to supplementary means of

NYU School of Law, 2008) 24; Committee on the Rights of the Child (ComRC), 'General Comment No.8: The Right of the Child to Protection from Corporal Punishment and to Cruel and Degrading Punishment' (2006), CRC/C/G8/8 (GC8) para.20; E Van Daalen, K Hanson and O Nieuwenhuys, 'Children's Rights and Living Rights: The case of street children and a new law in Yogyakarta, Indonesia' [2016] 24 *IJCR* 803

⁷ UN General Assembly Resolution 31/169, 'International Year of the Child' (21 December 1976)

⁸ Ibid para.3

⁹ UN Economic and Social Council, 'Letter dated 17 January 1978 from the Permanent Representative of Poland to the United Nations Office at Geneva addressed to the Director of the Division of Human Rights' (18 January 1978) E/CN.4/1284

¹⁰ M Raisch, 'Travaux Préparatoires and United Nations Treaties or Conventions: Using the Web Wisely' [2002] 30 *IJLI* 324, 325

¹¹ Vienna Convention on the Law of Treaties 1969 (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) Article 31(1)

interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, to confirm the meaning... or determine the meaning when the interpretation... (a) leaves the meaning ambiguous or obscure'.¹² These rules 'provide the starting point for the interpretation of treaties under international law'.¹³ The *travaux préparatoires* are an important source of information when seeking to further understanding of the Convention, and the right to play. As Article 31 sits in a body of human rights seen as open-textured in nature, the *travaux préparatoires* offer the best insight into the ordinary meaning of the text, object and purpose of the treaty, and individual articles.¹⁴ The discussion that follows arises from archival research into the *travaux préparatoires* for both the Declaration and the Convention, carried out at the UN library and archives in Geneva in 2017, as well as desk-based research.

2.1. The Drafting History of the Declaration on the Rights of the Child

To understand more fully the reasons for the inclusion of a right to play in the Convention, it is necessary to explore the *travaux préparatoires* for the Declaration on the Rights of the Child. The draft Declaration was discussed by the Third Committee of the General Assembly in September and October 1959. The Committee discussed the text of the UN Commission on Human Rights and that of the Social Commission, as well as amendments and proposals offered by Committee Members. A right to play was not included in the texts of the Commission on Human Rights or the Social Commission.¹⁵

¹² Ibid Article 32

¹³ K Mechlem, 'Treaty Bodies and the Interpretation of Human Rights' [2009] 42 *VJTL* 905, 910-11

¹⁴ R Provost and C Sheppard, 'Introduction: Human Rights Through Legal Pluralism', in R Provost and C Sheppard (eds.) *Dialogues on Human Rights and Legal Pluralism* (Springer, 2012) 11

¹⁵ OHCHR, *Legislative History of the Convention on the Rights of the Child* (OHCHR/Save the Children, 2007) 17-20

Throughout the drafting process, references were made to the holistic development of the child, including physical, mental, moral, spiritual, and social development.¹⁶ Emphasis was placed on the desire for children to enjoy a 'happy childhood',¹⁷ and on ensuring promotion of 'the development of the moral and social conscience of the child'.¹⁸

It was in this context that Mexico, Peru and Romania proposed the addition of a new principle to the Declaration (three-Power amendment).¹⁹ This amendment stated: 'The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall be under an obligation to ensure the enjoyment of this right'.²⁰ The amendment sought to encourage public authorities 'to take a positive action to enable [the child] to engage in such play and recreation as would supplement his education and facilitate his adjustment to society[... and to secure] to children the right to amuse themselves'.²¹ It was hoped that the inclusion of such a principle would ensure that children 'developed in a healthy atmosphere of play and happiness'.²² This amendment is the original reference to a right to play in international law.

¹⁶ UNGA Third Committee, '14th Session, 907th Meeting' (25 September 1959) A/C.3/SR.907, para.26; UNGA Third Committee, '14th Session, 916th Meeting' (6 October 1959) A/C.3/SR.916 para.23; UNGA Third Committee '14th Session, 920th Meeting' (8 October 1959) A/C.3/SR.920, para.40

¹⁷ Official Records of the General Assembly, 'Report of the Third Committee, 14th Session Plenary Meeting' (20 November 1959) A/4249, para.34

¹⁸ A/C.3/SR.920 (n16) para.40

¹⁹ Ibid para.53. The term 'three-Power/s' is used here as it is reflective of the terms used within the *travaux préparatoires*.

²⁰ UNGA Third Committee, 'Mexico, Peru and Romania: amendments to the draft Declaration of the Rights of the Child (E/3229, chapter VII, text of the Commission on Human Rights)' 14th Session (30th September 1959) A/C.3/L.730, para.1

²¹ A/C.3/SR.920 (n16) para.53

²² Ibid para.54

The three-Power amendment was proposed despite the inclusion of recreation in Principle 5 of the Declaration,²³ with the representative from Mexico stating that 'the recreation to which Principle 5 referred was leisure as distinct from work; it concerned the rest periods to which all workers, whether children or adults, were entitled, rather than to an activity proper to childhood and ending with it'.²⁴ The amendment introduced a child-specific right that reflected a particular understanding of childhood. The differentiation between Principle 5 and this amendment was challenged by several members but supported by others. The Romanian representative emphasised a difference in role of the type of recreation in Principle 5, and the type of recreation and play in the amendment. He stated that 'the purpose of the recreation provided for in Principle 5 was simply to enable the child to develop in health. Play was something quite different. It was an essential activity in which all the child's faculties were called upon'.²⁵ The Saudi Arabian representative expressed support for the amendment in addition to Principle 5, stating that the three-Powers 'were right in wishing to supplement the section on education with a much more specific reference to a natural childhood activity'.²⁶ Play was referred to as enabling growth and a child's 'adjustment to society'.²⁷

Some members of the Committee suggested the amendment was not necessary as it was 'already expressed in Principle 2'.²⁸ Principle 2 of the Declaration reads: 'The child shall enjoy special protection, and shall be

²³ 'The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end special care and protection shall be provided both to him and to his mother, including adequate prenatal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services'

²⁴ A/C.3/SR.920 (n16) para.53

²⁵ UNGA Third Committee, '14th Session, 922nd Meeting' (12 October 1959) A/C.3/SR.922, para.32

²⁶ Ibid para.4

²⁷ A/C.3/SR.920 (n16) para.53

²⁸ UNGA Third Committee, '14th Session, 921st Meeting' (9th October 1959) A/C.3/SR.921, para.34

given opportunities and facilities, by law and by other means, to enable him to *develop physically, mentally, morally, spiritually and socially in a healthy and normal manner* and in conditions of freedom and dignity'.²⁹ The representative for the Netherlands stated that 'in giving effect to Principle 2... States could hardly fail to provide the opportunity for play and recreation'.³⁰ This link between Principle 2 and the three-Power amendment highlights an understanding of, and belief that, the protection of play and recreation supports, and is necessary for, the holistic development of the child. This is a broader and deeper understanding of play that goes beyond simply viewing play as rest.

Nevertheless, the amendment did appear to provide a limit on play which was to be 'directed to the same purposes as education'.³¹ Whilst this does on initial reading seem to limit the scope of the type of play protected in the Declaration, an exploration of the *travaux préparatoires* shows that the intention was to ensure that the purpose of education was 'to promote [the child's] general culture and to... develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society'.³² This suggests a holistic, broad approach to and understanding of education as well as play, which sits in line with research examined throughout Chapter 2 suggesting the importance of play for the holistic development of the child.

The Romanian representative emphasised this approach in highlighting that 'the importance of play was widely recognised, whether as a preparation for life, as a spontaneous activity or as an outlet for the child's energy'.³³ He

²⁹ Declaration, Principle 2 (emphasis added)

³⁰ A/C.3/SR.921 (n28) para.33

³¹ A/C.3/L.730 (n20) para.1

³² Declaration, Principle 7

³³ A/C.3/SR.922 (n25) para.33

continued 'during his free time the child should engage in activities which fostered the full development of his personality and discouraged him from adopting anti-social modes of behaviour'.³⁴ He concluded by reiterating that 'to ensure the full development of the child's personality, play and recreation should have a large part in education'.³⁵ It is clear that the drafters of the amendment saw a strong link between education and play, and the need to enable and protect play to ensure the holistic development of the child, with a broad interpretation of the provision.

The relationship between play and education was picked up by the Saudi Arabian representative, who supported the amendment but sought to clarify that 'it should be left to the child and the school to direct that activity, which, while it must not conflict with the education the child was receiving, [play] need not necessarily be directed to the same purposes as his education'.³⁶ The delegate's comments show a desire to ensure that play was not limited in scope, by requesting that realisation of the right not be not limited to furthering education. The Polish representative argued that play and recreation 'were not always part of the educational system', and occurred in a wide variety of settings.³⁷ He argued that 'the Committee's basic task was to ensure the development of the child's personality under the conditions of modern life, both in and out of school'.³⁸ Although the Saudi request to remove the link to education³⁹ and the Polish request to keep the amendment separate from Principle 7 (on education)⁴⁰ were not implemented, it is clear that the views expressed by Romania, Saudi Arabia

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid para.4

³⁷ UNGA Third Committee, '14th Session, 923rd Meeting' (12 October 1959) A/C.3/SR.923, para.1

³⁸ Ibid

³⁹ A/C.3/SR.922 (n25) para.4

⁴⁰ A/C.3/SR.923 (n37) para.1

and Poland centred around a common belief in the importance of play and recreation for the holistic development of the child, additional and separate to education.

The third paragraph of Principle 7 in the accepted text read:

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

2.2. From Declaration to Convention: The Drafting History of Article 31

This section examines the *travaux préparatoires* for the Convention on the Rights of the Child, shedding light on the discussions surrounding the object and purpose of the right to play, its relationship to education, who the right covers, and its association with the holistic development of the child.

The Draft Convention on the Rights of the Child was submitted by Poland to the UN Commission on Human Rights during its 34th session, on 7 February 1978, with a request that the Convention be adopted during the 1979 International Year of the Child.⁴¹ Article 7(3) of this first draft read: 'The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right'.⁴² The Polish delegation stated in an Explanatory Memorandum that the 1959 Declaration had 'played a significant part in the assistance, care and the rights of children in the entire world as well as in shaping various forms of

⁴¹ UN Commission of Human Rights (UNCHR), 'Working Documents of the 34th Session' (7 February 1978) E/CN.4/L.1366

⁴² UNCHR, 'Report of the 34th Session' (6 February-10 March 1978) E/CN.4/1292, 124-125

the international co-operation in this sphere'.⁴³ No explanation was given for differences between provisions in the Declaration and the draft Convention.

Most of the initial discussions around the Convention were based on timing, rather than content of the draft, with many delegations requesting that the Convention be discussed after the International Year of the Child to allow for new research to be gathered and the activities prepared for the International Year of the Child to take place before discussing the Convention thoroughly.⁴⁴ One comment made by the Syrian Arab delegation at this stage is worth highlighting as it began to touch upon the substantive content of the Draft Convention:

The Syrian Arab delegation considered that the rights of the child varied from one geographical region to another. The privileged children had a right to leisure and to the full development of their personality, and to be protected against violence, cruelty, exploitation, drugs and the slave trade, while the underprivileged children of developing societies had the right to life, to their daily bread, to shelter and to protection against underdevelopment. Only through international solidarity could children be properly protected. At the national level, it was essential that children should be protected against all practices leading to hatred, to segregation or to racial or religious supremacy. They must be brought up in a spirit of equality among peoples and universal

⁴³ E/CN.4/1284 (n9) 2

⁴⁴ UNCHR, 'Summary Record of the 1472nd Meeting held 6 March 1978', (9 March 1978) E/CN.4/SR.1472, 2-3; UNCHR, 'Question of a Convention on the Rights of the Child', (23 February 1978) E/CN.4/NGO/225

brotherhood. For all those reasons, the proposed draft resolution should be able to service as a basis for a final document.⁴⁵

This input goes some way to demonstrate how the right to play has been regarded as a luxury right in the sense that only 'privileged children' have access to similar rights such as the 'right[s] to leisure and to the full development of their personality'.⁴⁶ The Syrian Arab delegation emphasised the need to see equality in the implementation of the rights held in the Convention, for all children. This would move towards viewing the right to play as vital to children and not simply as a luxury right. This need for equality in the implementation of rights is clear in the rhetoric of human rights and in children's rights,⁴⁷ but is not always seen in practice (both in the context of domestic implementation and work of human rights treaty bodies).

Having agreed on the adoption of the agenda item for the drafting of the Convention, the Commission on Human Rights opened a call for comments to Member States, agencies, international organisations, and NGOs.⁴⁸ This call resulted in comments on the Draft Convention as a whole, and on specific articles. This discussion focuses on comments related directly to Article 7 of the first draft, and to the paragraph containing the right to play, paragraph 3.

The first document produced containing a summary of the comments received was the 27 December 1978 Report of the Secretary-General.⁴⁹ The

⁴⁵ UNCHR, 'Summary Record of the 1471st Meeting held 7 March 1978', (7 March 1978) E/CN.4/SR.1471

⁴⁶ P David, *A Commentary on the United Nations Convention on the Rights of the Child, Article 31: The Right to Leisure, Play and Culture*, (Nijhoff, 2006) 17

⁴⁷ On equality in implementation, Chapter 5

⁴⁸ UNCHR, 'Question of a Convention on the Rights of the Child' (8 March 1978) E/CN.4/RES/1989/57

⁴⁹ UNCHR, 'Question of a Convention on the Rights of the Child: Report of the Secretary-General', (27 December 1978) E/CN.4/1324

report included five comments directed at Article 7(3). The first was from the Society of Comparative Legislation upholding the original paragraph draft, providing support for the inclusion of the right to play in the Convention and the notion that such activities 'should be directed to the same purposes as education'.⁵⁰ The UNESCO contribution addressed the issue of culture, despite the fact that culture was not originally included in the draft.⁵¹

Two contributions were made by states relevant to Article 7(3) of the Draft Convention. The first was from the Federal Republic of Germany. This proposed that Article 7(3) should be considered 'only as undertakings on the part of States' as opposed to a 'measure on the rights of the individual'.⁵² The second contribution was from Norway. This suggested re-ordering the article with the right to play appearing first, offering it more prominence as a right in the context of an article on education. This new ordering placed the right to play in the first paragraph, stating: 'Children, including children of preschool age, shall have full opportunity of play, social activities and recreation, as a means to ensure their full mental and physical development. Society and the public authorities shall endeavour to promote the enjoyment of this right'.⁵³ This is the first instance emphasis was placed on a particular age group enjoying the right to play. Rather than addressing play for the same purposes as education, this contribution emphasised children's mental and physical development.

⁵⁰ Ibid 41 (Contribution by the Society for Comparative Legislation, 24 October 1978)

⁵¹ Ibid 40 (Contribution by UNESCO, 27 October 1978). UNESCO argued for the need for the protection of children's cultural expression, conditions for creative work and artistic expression, as well as the development of cultural education and artistic training. This began the process of inclusion of the right to participate freely in cultural life and the arts in Article 31 of the CRC but did not see any mention of a right to play.

⁵² Ibid 11 (Contribution by the Federal Republic of Germany, 8 November 1978)

⁵³ Ibid 38 (Contribution by Norway, 14 November 1978)

The Commission on Human Rights produced a second collection of comments for the question of a Convention on the Rights of the Child.⁵⁴ This document contained two contributions relevant to Article 7(3), one from France and the other from Suriname. The contribution from Suriname emphasised support by the Government of Suriname for Article 7(3),⁵⁵ whilst the contribution from France provided more substantive comment. This highlighted some of the same arguments made in the *travaux préparatoires* for the Declaration, regarding the relationship between the right to play and education. The delegation from France argued that Article 7(3) could 'be interpreted as restricting the rights of the child, since it specified that his play and recreation "should be directed to the same purposes as education"'.⁵⁶ The contribution continued, stating that whilst 'educational games are to be encouraged, they should not be the only ones the child can play', and that for the child's 'full development, he also must involve himself in activities which are not necessarily part of a specific educational system'.⁵⁷ The French delegation therefore requested that the phrase 'should be directed to the same purposes as education' be removed from the provision.⁵⁸

This re-introduced the issue of the relationship between right to play and education into the *travaux préparatoires* and highlighted a need to ensure that a right to play was not restricted or supported simply for educational means. Such comments are useful for understanding where play should fit in a context of a scholarisation of childhood,⁵⁹ and how a right to play should be realised. They begin to raise questions such as whether including games

⁵⁴ UNCHR, 'Question of a Convention on the Rights of the Child: Report of the Secretary-General, Addendum', (1 February 1979) E/CN.4/1324/Add.1

⁵⁵ Ibid 4 (Contribution by Suriname, 20 December 1978)

⁵⁶ Ibid 7-8 (Contribution by France, 18 December 1978)

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Chapter 3, Section 3

and sports during the school day is enough to realise the right to play, and what support there should be for children outside school facilities.

A further contribution offered during this initial call for comments was provided by New Zealand and again queried the phrase 'the same purpose as education'. It suggested the phrase was unclear in its meaning and questioned whether the word "same" referred to the 'the same purposes of all aspects of education', and whether the term "education" was 'seen to be the same activity as schooling'.⁶⁰ It is clear from these comments, and those made by France, that the phrase 'should be directed to the same purposes as education' would require much more clarification if it were to remain in the Convention.

The New Zealand delegation raised questions over the phrase 'full opportunity', suggesting that this could present problems for implementation of the right to play.⁶¹ It submitted that the phrase could refer to 'easy physical access' or to 'plenty of time', or to 'provisions for various ages of children', or to all of the above.⁶² It reflected on whether the rights to play and recreation would be implemented if children were provided 'access to schools outside of normal school hours, and whether play and recreation schemes and equipment provided by schools are sufficient to be classed as a "full opportunity"'.⁶³ This demonstrates some problems of implementation. Even without the phrase 'full opportunity' in the provision, if a State party to the Convention is to know how to implement the right to play, more information than that provided in the

⁶⁰ UNCHR, 'Question of a Convention on the Rights of the Child: Report of the Secretary-General, Addendum' (22 January 1980) E/CN.4/1324/Add.5, 3 (Contribution by New Zealand, 16 January 1980) (emphasis in original)

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

article itself would be necessary.⁶⁴ This contribution raised the question of responsibility, reflecting on whether local government bodies or central government departments and bodies would hold responsibility for the implementation of these rights, and whether such bodies 'would have sufficient resources to handle this task'.⁶⁵

The delegation highlighted that the distinction between play and recreation was not clear. In the *travaux préparatoires* for the Declaration, some distinction was made between the two concepts, with attention given to recreation as time away from work. Based on the information available it is not clear how widely this viewpoint was held or whether those views resurfaced during the drafting of the Convention. The comments provided by the New Zealand delegation raised the issue of perspective in noting that "play" and "recreation" are not necessarily viewed in the same positive light by many members of the community'.⁶⁶ This contribution to the *travaux préparatoires* emphasised the need for more clarity on the content and meaning of the provision to ensure successful implementation of the rights therein.

During the 36th Session of the Commission on Human Rights, Poland produced a revised draft Convention. This draft included more articles, renumbering Article 7(3) from the first draft to Article 18. It separated the provision from education, and included a rewording as follows: 'The child shall have full opportunity for recreation and amusement appropriate to his age. The parents and other persons responsible for the care of the child, educational institutions and state organs shall be obliged to implement this

⁶⁴ Chapter 5 provides an in-depth discussion on State obligations in implementing the right to play

⁶⁵ E/CN.4/1324/Add.5 (n60) 3

⁶⁶ Ibid. Chapters 3 and 6 provide further discussion on perceptions of play.

right'.⁶⁷ It is unclear as to why the Polish delegation decided to provide a revised draft. The separation of the provision from education had considerable mention during the first call for comments.

The other notable change was the removal of the right to play. Instead, the child was offered a right to amusement. It is unclear as to why this change was made, particularly as there is no mention of the term "amusement" in the submissions regarding this provision, nor is there any explanation given for the change. One suggestion could be that the Polish delegation saw the terms play and recreation as interchangeable, attempting to remove the lack of clarity. Another explanation for this change could be that the Polish delegation saw that a right to amusement was either more important or interchangeable with a right to play. No account for the removal of the right to play is evident in the *travaux préparatoires*.

Following the revised draft, the Polish delegation submitted yet another text (changing the numbering of the articles again, making the provision in question Article 17), this time to the UN General Assembly Third Committee. The modified proposal for this article read as follows:

The States parties to the present Convention undertake to ensure to all children opportunities for leisure and recreation commensurate with their age. Parents and other persons responsible for children, educational institutions and state organs shall supervise the practical implementation of the foregoing provision'.⁶⁸

⁶⁷ UNCHR, 'Note Verbale dated 5 October 1979 addressed to the Division of Human Rights by the Permanent Representation of the Polish People's Republic to the United Nations in Geneva', (17 January 1980) E/CN.4/1349

⁶⁸ UNGA Third Committee, 'Document submitted by Poland. Status of a draft Convention on the Rights of the Child', (7 October 1981), A/C.3/36/6, 5

The Polish delegation rephrased the initial sentence and replaced the term “amusement” with “leisure”, still not including “play”. As the term “leisure” had not previously appeared in this provision, it is unclear why the Polish delegation made this change and why the decision to remove the right to play was sustained despite no such request apparently having been made by delegations. This modified proposal went forward into the first reading of the draft Convention.

The first reading of the Draft Convention on the Rights of the Child took place from 1979-1988. The article was discussed and subsequently adopted by the Working Group during its 1985 sitting.⁶⁹ Several proposals were submitted to the Working Group during the first reading, from state and non-state actors. The first proposal was from a coalition of NGOs. It suggested several amendments to include a duty of States parties to ‘promote measures ensuring that all children are provided with opportunities for leisure and recreation commensurate with their age’, and that others with responsibility for children are ‘encouraged’ by States parties to implement the provision.⁷⁰ These changes could be seen to place more responsibility on the state for the implementation of the provision as they suggested that the state should be responsible for encouraging others to supervise the practical implementation of the provision. Although the inclusion of ‘promote measures’ could be viewed as a reduction in

⁶⁹ UNCHR, ‘Report of the Working Group on a draft Convention on the Rights of the Child’, (3 April 1985) E/CN.4/1985/64

⁷⁰ UNCHR, ‘Proposals submitted by the following non-governmental organisations in consultative status: International Council of Women (category I), Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress’, (14 January 1982) E/CN.4/1982/WG.1/WP.1, 5

responsibility as it requires States parties to simply *promote* as opposed to *ensure* the implementation of the provision.

Another proposal submitted to the Working Group was from two NGOs, the International Federation of Women in Legal Careers and the International Abolitionist Federation.⁷¹ This focused on recreational activities, calling for the provision to specify the need for time and areas to be set aside for recreational activities. Another aspect of the submission was the request 'for green spaces to be created for the health of young children'.⁷² It acknowledged the importance of time outdoors in natural space for children.⁷³ This proposal still did not include reference to a right to play.

The first submission to the Working Group during the first reading of the draft Convention to include a right to play was from the delegation for Canada. This proposal re-drafted the article (here Article 18) to read:

1. Every child has the right to rest and leisure, to engage in play and recreation and to freely participate in cultural life and the arts.
2. Parents, States parties, educational institutions and others caring for children shall take steps to implement this right, including making reasonable limitations on school and working hours.⁷⁴

⁷¹ UNCHR, 'Written Statement submitted by two non-governmental organisations in consultative status: The International Federation of Women in Legal Careers and the International Abolitionist Federation, 16 February 1983', (17 February 1983) E/CN.4/1983/NGO/33, 5

⁷² Ibid

⁷³ Chapter 2; Chapter 4, Section 2.2 for natural space as optimal for play, for children's holistic development.

⁷⁴ UNCHR, 'Report of the Working Group on a draft Convention on the Rights of the Child' (23 February 1984) E/CN.4/1984/71, Annex II, 2 (This proposal was received in 1983 but reproduced in this document)

Not only did the proposal reintroduce the right to 'play', it also introduced the idea of a limit on school and work hours for children to assist in the implementation of this right. This proposal was not considered during the 1984 Working Group session, and at the beginning of the 1985 Working Group session two more proposals were submitted, one of which included a right to play and another which did not. The first was submitted by the NGO Ad Hoc Group.⁷⁵ It amended their previous proposal to read 'The States parties to the present Convention shall recognise the child's right to play, leisure and recreation, and shall promote measures to ensure that all children, irrespective of socio-economic status, are provided with opportunities'.⁷⁶ This included a right to play, and a requirement that states recognise the right. It required that States parties 'encourage parents and other persons responsible for the child to subscribe to such measures and shall ensure that housing and town planning authorities, and other state organs, implement these provisions accordingly'.⁷⁷ Inclusion of housing and town planning authorities, and the reduction in focus on schools and other educational facilities, evidences a move towards discussion of the implementation of these rights outside the school context as well as recognition of the need to ensure appropriate space for children's play.

The other proposal for the 1985 sitting was submitted by the United States of America. This proposal did not include a right to play, nor a right to leisure or even amusement, and instead simply stated: 'The States parties to the present Convention recognise the importance of recreational and cultural activity to the well-being and balanced development of the child'.⁷⁸

⁷⁵ NGO Ad Hoc Group, 'Informal Consultations among Non-Governmental Organisations, Report on Conclusions, December 1984' (1985)

⁷⁶ Ibid (emphasis added)

⁷⁷ Ibid (emphasis added)

⁷⁸ OHCHR (n15) 690

This did not include a right for the child, but acknowledged the importance of certain activities for the child's well-being and development. The following paragraph of the proposed article included 'the right of the child to fully participate in cultural and artistic life'.⁷⁹ The United States of America had voted against the inclusion of Article 7 in the 1959 Declaration on the Rights of the Child.⁸⁰

Having received these proposals, the Working Group discussed the drafting of Article 17 during its 1985 sitting.⁸¹ The discussion was based on the paragraph 1 of the proposed text from the delegation of Canada and paragraph 2 of the proposal from the delegation for the United States of America. It is unclear from available documents why the Working Group chose these drafts to form the basis of its discussion. Very few changes were made to these texts. With regard to Paragraph 1 of the Article, the observer for Cuba proposed amending the paragraph to add 'appropriate to the age of the child' after the words 'play and recreation', whilst the representative for the United Kingdom 'suggested replacing the word "recreation" by "recreational activities"', and the representative for France made an amendment to change 'Every child has the right' to 'States parties to the Present Convention recognise the right of the child' for the introductory words to the sentence.⁸² The new text was agreed by the Working Group and read as follows: 'States parties to the Convention recognise 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'.⁸³ The second paragraph goes further

⁷⁹ Ibid

⁸⁰ A/C.3/SR.923 (n37) para.81

⁸¹ E/CN.4/1985/64 (n69) paras.105-109

⁸² Ibid para.106

⁸³ Ibid para.107

than recognising 'the right of the child... to engage' in the other rights held in the article but it did not include reference to the right to play.

At the 1989 Working Group meeting the draft Article received its second reading. This saw one change made to the Article, a technical revision removing the words 'to the present Convention' from both paragraphs of the Article.⁸⁴ Article 31 of the Convention was adopted by the General Assembly in November 1989.⁸⁵

3. The Committee on the Rights of the Child

This section examines the approach of the Committee to the right to play. It outlines the Committee's forms of output and their legal status, before analysing the outputs to provide an overview of where the Committee mentions the right to play and reflecting on the Committee's approach to the right. It concludes by reflecting upon what the Committee's outputs say about the right to play and its importance. General Comment 17 *on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts* (GC17), is not examined in detail in this chapter as it is discussed in depth throughout the thesis.⁸⁶ The focus of GC17 on Article 31 would skew the general picture of the Committee's approach.

3.1. The Committee's Forms of Output

The Committee on the Rights of the Child was established in accordance with the principles of its Convention, 'for the purpose of examining the progress

⁸⁴ UNCHR, 'Report of the Working Group on a draft Convention on the Rights of the Child', (2 March 1989) E/CN.4/1989/48, para.504

⁸⁵ UNGA Resolution A/RES/44/25, 'Convention on the Rights of the Child', (20 November 1989)

⁸⁶ Chapters 1, 3 and 5

made by States parties in achieving the realisation of the obligations undertaken in the present Convention'.⁸⁷

The primary function of human rights treaty bodies is to 'supervise States parties' compliance with their obligations under a treaty'.⁸⁸ This includes monitoring implementation progress and providing 'public scrutiny on realisation efforts'.⁸⁹ Three forms of output provided by the Committee are addressed in this chapter: Concluding Observations, General Comments, and Days of General Discussion (DGDs). These are the primary sources of information when looking for substantive normative content on rights and their implementation, other than decisions on communications under the Convention's Optional Protocol on a communications procedure,⁹⁰ of which none to date have addressed Article 31 and the right to play.

The Convention includes a requirement for States parties to 'submit to the Committee... reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights'.⁹¹ The process of providing State Reports is hoped to offer 'an opportunity for national introspection', and to reflect both government and civil society perspectives on the state's implementation of Convention obligations.⁹² They are used to monitor State party compliance with the Convention. State Reports form the main focus of the Committee's work, as it gathers information and assesses submissions alongside additional information provided by specialized agencies or other 'competent bodies',⁹³

⁸⁷ Article 43(1) UNCRC

⁸⁸ Mechlem (n13) 907

⁸⁹ Ibid

⁹⁰ UNGA Resolution A/RES/66/138, 'Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure' (20 December 2011)

⁹¹ Article 44(1) UNCRC

⁹² F Viljoen, 'International Protection of Human Rights', in H Strydom (ed) *International Law* (OUP, 2016) 334

⁹³ Article 45(a-b) UNCRC

to provide 'observations and suggestions' on measures of implementation in the form of Concluding Observations.⁹⁴ There have been 549 Concluding Observations produced by the Committee to date.⁹⁵ Concluding Observations provide assessments of measures taken and areas for improvement to fulfil the Convention's obligations, and 'contain positive features, problematic issues and recommendations' for future practice.⁹⁶ It is expected that Committee recommendations in Concluding Observations, coupled with the reporting process, will 'induce changes to the law, policy and practice in member states',⁹⁷ and 'stimulate and inform national human rights dialogue'.⁹⁸

The Committee has produced 24 General Comments to date, on a variety of topics including general measures of implementation, in depth reflections on specific rights and thematic issues. General Comments are intended to provide additional information for States parties and interested others on the content and application of the Convention, and to assist states in their implementation and reporting of the Convention. Days of General Discussion assist the Committee in developing a greater understanding of specific topics through input from interested parties and experts, and sometimes form the basis for future General Comments.⁹⁹ To date the Committee on the Rights of the Child has held 24 DGDs.

⁹⁴ Article 45(b) UNCRC

⁹⁵ Data collection ended on 30 April 2020

⁹⁶ Viljoen (n92) 334

⁹⁷ Mechlem (n13) 908

⁹⁸ Ibid

⁹⁹ For example: ComRC, 'Day of General Discussion: Implementing Child Rights in Early Childhood' (17 September 2004) (DGD 2004) and ComRC, 'General Comment No.7 on Implementing Child Rights in Early Childhood' (2006) CRC/C/GC/7/Rev.1 (GC7)

3.2. The Legal Status of the Committee's Outputs

Prior to examining the outputs of the Committee for their treatment of the right to play, it is necessary to explore the legal status of the Committee's Outputs. This is not a simple task as 'the legal basis of [treaty body] interpretations has never been fully settled'.¹⁰⁰

At best, the Committee's outputs may be considered soft law. Hard law is resigned to the realm of explicit legal texts and requires specified consent by parties to the law. Soft law is a much broader concept, with some dispute as to what it includes.¹⁰¹ Soft law is not binding but may have some weight by calling upon an 'extra-consensual notion of the good or the just', leading to compliance.¹⁰² Often soft law texts hold 'specific normative content that is 'harder' than the soft commitments in treaties', likely due to the need for aspects of vagueness and open-ended provisions to entice signatories to hard law treaties.¹⁰³

Soft law texts provide much needed normative clarity to vague provisions, plugging gaps in hard law texts or supplementing them with new norms.¹⁰⁴ Due to an increasing reliance on soft law texts to provide normative clarity to the hard law treaties, the line between soft and hard law 'may appear blurred'.¹⁰⁵ This close relationship between hard and soft law explains the fact that soft law is rarely found in isolation; it is most commonly either a

¹⁰⁰ D McGrogan, 'On the Interpretation of Human Rights Treaties and Subsequent Practice' [2014] 32 *NQHR* 347, 348

¹⁰¹ D Shelton, 'Introduction: Law, Non-Law and the Problem of 'Soft Law'' in D Shelton, D (ed) *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (OUP, 2000) 4

¹⁰² D Kennedy, 'The Sources of International Law' [1987] 2 *AmUIntlLRev* 1, 20; and *Ibid*

¹⁰³ Shelton (n101) as quoted in P Alston and R Goodman, *International Human Rights: The Successor to International Human Rights in Context* (OUP, 2013) 86; P Alston, 'The Historical Origins of "General Comments" in Human Rights Law', in L Boisson De Charzournes and V Gowlland-Debbas (eds) *The International Legal System in Quest of Equity and Universality* (Brill, 2001) as quoted in Alston and Goodman (n103) 768; Viljoen (n92) 336; McGrogan (n100) 347;

¹⁰⁴ Shelton (n101) 14

¹⁰⁵ *Ibid* 10

precursor or supplement to hard law instruments.¹⁰⁶ Simply because soft law is not legally binding 'does not inevitably lead to soft legitimacy'.¹⁰⁷

The VCLT was agreed upon by states to guide the practice of compliance with treaty law. It includes provisions that require subsequent practice to be considered in the application of treaties. Article 31 states that treaties 'shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose',¹⁰⁸ and that '[a]ny subsequent practice in the application of the treaty' shall be considered.¹⁰⁹ Article 32 adds that '[r]ecourse may be had to supplementary means of interpretation' to confirm or determine the meaning of the text.¹¹⁰ These provisions provide the legal framework for the interpretation of international treaties. Subsequent practice refers to 'authentic means of interpretation... [that] consists of conduct in the application of the treaty, after its conclusion, which establishes the agreement of the parties regarding the interpretation of the treaty', and 'as a supplementary means of interpretation[,]... conduct by one or more parties in the application of the treaty, after its conclusion'.¹¹¹

Some argue that human rights treaty bodies are court-like legal bodies, others state they are 'quasi-judicial', and others view them as merely political or advisory.¹¹² In the International Law Association (ILA) Committee

¹⁰⁶ Ibid

¹⁰⁷ H Keller and L Grover, 'General Comments and the Human Rights Committee' in H Keller and G Ulfstein (eds) *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP, 2012) 194

¹⁰⁸ VCLT Article 31(1)

¹⁰⁹ VCLT Article 31(3)(b)

¹¹⁰ VCLT Article 32

¹¹¹ ILC, 'Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties' (11 May 2018) A/CN.4/L/907, Conclusion 4(2) and (3)

¹¹² Mechlem (n13) 913-914; G Ulfstein, 'Individual Complaints', in H Keller and G Ulfstein (eds) *UN Human Rights Treaty Bodies: Law and Legitimacy*, (CUP 2012) 97; G Nolte, 'Jurisprudence under special regimes relating to subsequent agreements and subsequent practice' in G Nolte (ed) *Treaties and Subsequent Practice* (OUP, 2013) 275; International Play Association, 'UN General Comment on Article 31 – purpose of this section' <<http://ipaworld.org/childs-right-to-play/un-general-comment/what-is-a-un-general->

on International Human Rights Law and Practice's *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, the ILA Committee acknowledges that the VCLT was 'written as if no monitoring body had been established by a treaty... and as if it were only for other States to monitor each other's compliance and to react to non-compliance'.¹¹³ Monitoring body outputs are not state practice; only responses to monitoring body findings by States parties would constitute such practice.¹¹⁴

The special nature of human rights treaties is different and thus 'State parties cannot be relied upon to interpret treaty terms' as they would 'have every incentive to interpret their obligations restrictively and not, in fact, in line with the treaty's object and purpose'.¹¹⁵ A different approach is required for human rights treaties. The ILA Committee suggests that, in interpreting human rights treaties, 'relevant subsequent practice might be broader than the subsequent *state* practice and include the considered views of the treaty bodies'.¹¹⁶ Central to this is the position of human rights monitoring bodies as entrusted with competence to interpret treaty provisions. Treaty body interpretations can be understood as subsequent practice based on the status of the committee as 'the only international body established for the purpose of interpreting the Covenant'.¹¹⁷

Treaty body outputs, particularly General Comments and Concluding Observations,¹¹⁸ have 'become a relevant interpretative source for many

[comment-2/](#)> accessed June 2017; Keller and Grover (n107) 138; Alston (n103) 764, as quoted in Blake (n6) 23

¹¹³ Committee on International Human Rights Law and Practice, 'Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies' in *International Law Association Report of the Seventy-First Conference* (Berlin 2004) (International Law Association, London 2004) (ILA) para.22

¹¹⁴ Ibid para.21

¹¹⁵ McGrogan (n100) 352

¹¹⁶ ILA (n113) para.22

¹¹⁷ Keller and Grover (n107) 129-30

¹¹⁸ ILA (n113) para.176

national courts [and] international tribunals'.¹¹⁹ These outputs are utilised in international, national and regional courts as they set out 'important background principles against which a law may be analysed'.¹²⁰ The International Court of Justice's *Diallo* case is particularly important for understanding the status of treaty body outputs, stating:

Since it was created, the Human Rights Committee has built up a considerable body of interpretative *case law*... Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe *great weight* to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the states obliged to comply with treaty obligations are entitled.¹²¹

The comments made can be ascribed to other treaty monitoring bodies holding the same function for their relative treaties as the Human Rights Committee does for the ICCPR. Treaty body outputs vary in rigour, clarity and purpose, and so must their status, including those of the Committee on the Rights of the Child.

3.2.1. Legal Status of Days of General Discussion

¹¹⁹ Ibid para.175

¹²⁰ Keller and Grover (n107) 129

¹²¹ *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)* (Merits) [2010] ICJ 639, para.66 (emphasis added)

A Day of General Discussion is a report of discussions had with stakeholders and interested parties on a topic relating to the Convention. It does not have the intentionality of interpretation and agreement required to constitute subsequent practice.¹²² By their nature as a discussion, 'the individual members of the treaty bodies [may] explore different avenues and take different approaches, [thus] the treaty body itself does not speak with a unified voice'.¹²³ Consequently, DGDs should be accorded less weight. They are useful as they often inform General Comments and other subsequent practice of treaty monitoring bodies and reflect perceptions and understandings of experts in specific areas of relevance to provisions in treaty texts. Whilst not constituting "subsequent practice", DGDs could be 'considered to be supplementary means of interpretation under Article 32 of the VCLT'.¹²⁴

3.2.2. Legal Status of General Comments

General Comments are considered documents discussed and written by the Committee and are intended to provide instructive normative guidance for treaty implementation. This establishes them as outputs that hold some weight as the primary opportunity for treaty interpretation. Whilst General Comments are not hard law, they are neither 'insignificant' nor 'mere recommendations', rather 'their nature is such that there should at least be a rebuttable presumption that material contained in general comments can be constitutive of subsequent practice', or soft law.¹²⁵

¹²² McGrogan (n100) 359, 363-4

¹²³ Ibid 363-4

¹²⁴ Ibid fn.94; ILA (n113) para.20

¹²⁵ McGrogan (n100) 367; Keller and Grover (n107) 128-131; D Shelton, 'Soft Law', in D Armstrong (eds.) *Routledge Handbook of International Law* (Routledge, 2009) 70

They are inherently interpretative as they intentionally provide normative content and 'concrete meaning' to Convention rights.¹²⁶ Such interpretation is described as having evolved to be 'a robust legal analytical function' with the 'technique for defining the scope of a right having been developed over the years'.¹²⁷ For actions to constitute subsequent practice under the VCLT they must be intentional and must be 'undertaken as an interpretation of the treaty in question'.¹²⁸ General Comments are subsequent practice as they are intended to provide interpretative guidance on the treaty in question. The provision of such content increases the density of international understanding and practice on the Convention. The role of the Committee as responsible for interpretation of the treaty adds greater weight to the output,¹²⁹ additional to the 'expertise' expected and required of Committee members.¹³⁰

3.2.3. Legal Status of Concluding Observations

Concluding Observations fulfil a necessary function of the monitoring bodies' responsibilities, and can be viewed as interpretative as 'to fulfil [the Committee's] duties with respect to the reporting process their assessments will by necessity constitute some form of judgement regarding what the precise nature of States' obligations are [and] is, in its nature, interpretative of the treaty text'.¹³¹ Each Concluding Observation relates solely to the specific state at a particular time. Recommendations may offer guidance to other states on how they 'could better fulfil the objectives' of applicable

¹²⁶ Mechlem (n13) 908; Viljoen (n92) 336; Blake (n6) 38; McGrogan (n100)

¹²⁷ Keller and Grover (n107) 124; VCLT Article 32

¹²⁸ McGrogan (n100) 355

¹²⁹ Keller and Grover (n107) 129-30

¹³⁰ Ibid 133; M O'Flaherty, 'The Concluding Observations of United Nations Human Rights Treaty Bodies' [2006] 6 *HRLR* 27 32; Nolte (n112) 275; Alston (n103) 736-76, 775, fn.49; Ulfstein (n112) 97; McGrogan (n100) 366 citing T Opsahl, 'The Human Rights Committee' in P Alston (ed) *The United Nations Human Rights: A Critical Appraisal* (Clarendon, 1995) 415

¹³¹ McGrogan (n100) 364

provisions.¹³² Whilst each Concluding Observation focuses on a particular state, there may be 'concordance' with other Concluding Observations or General Comments.¹³³

The strength and weight of Concluding Observations depends on the approach taken by the Committee in its recommendations. There are instances where 'much of what exists in concluding observations is of little interpretative value' and recommendations within can be 'insufficiently specific and too aspirational and abstract to be viewed as anything other than exhortative in character'.¹³⁴ The strength and utility of Concluding Observations is increased when the Committee refers to specific concerns and offers specific guidance, as opposed to sweeping or vague statements and suggestions.¹³⁵ Concluding Observations are authoritative statements of treaty bodies 'performing an important supervisory function' and pertain to 'the legal obligations of the parties to the treaty' and thus cannot be inconsequential.¹³⁶

3.3. The Committee's Outputs and the Right to Play

This section reflects on the Committee's approach to the right to play, exploring how often it has referred to the right to play, whether the right has been referenced as a standalone right, or in conjunction with other article 31 rights, and in what context it has referred to the right to play. To investigate the Committee's approach to the right to play, all Concluding Observations, General Comments and Days of General Discussion (to date) were assessed and coded for references to the right to play. The criterion

¹³² H Keller and G Ulfstein, 'Introduction', in H Keller and G Ulfstein (eds) *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP, 2012) 4-5

¹³³ McGrogan (n100) 370

¹³⁴ Ibid 365

¹³⁵ W Kälin, 'Examination of state reports', in H Keller and G Ulfstein (eds) *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP, 2012) 63 and 64

¹³⁶ McGrogan (n100) 364

for coding was left broad to allow for any mention of the term 'play'. This decision was taken to both minimise researcher bias and allow for as broad data as possible to be included in the assessment.

Searches were conducted for other terms included in article 31, including 'leisure' and 'recreation' to gain an insight into the weight given to related article 31 rights. However, specific references to other article 31 rights are not discussed in detail; the focus is on the right to play. At times this distinction may be perceived as arbitrary – for example in the context of 'leisure space' or 'space for recreational activities', space which could be utilised for play – as the relationship between the rights is close.¹³⁷ This research focuses on *clear* references to the right to play. If inferences are necessary to understand how a statement relates to the right to play, the reference is not clear enough. This position was adopted due to the potential for states to ignore unclear guidance. The implementation of many different rights can indirectly impact on the right to play and thus potential references could be endless if inferences were included. This study did not include Committee references to 'all rights' due to the broad nature of the statements and the absence of specific information pertaining to the right to play.

3.3.1. Concluding Observations

All Concluding Observations from 18 February 1993 to 30 April 2020 were analysed. Duplicate Concluding Observations, submitted for different countries (e.g. the Netherlands, the Netherlands (Antilles) and the Netherlands (Aruba)), were grouped together and treated as one set of Concluding Observations. Where overseas territories, crown dependencies

¹³⁷ Chapter 1, Section 3

or others received separate Concluding Observations, these were analysed as standalone reports.

Out of the 549 Concluding Observations provided by the Committee to date, 299 refer to article 31 rights *only* in the title to the section on 'Education, Leisure and Cultural Activities (arts.28-31)', 149 mention article 31 rights such as leisure and recreation, and 101 neglect to reference rights to leisure or recreation completely. Only 100, less than 20%, include a reference to the right to play.

Most references to play (83) were made under the heading 'Education, Leisure and Cultural Activities', showing a focused approach to the right to play by addressing the right thematically and most often alongside other article 31 rights. The Committee's decision to consider article 31 rights alongside the right to education in its Concluding Observations brings to mind discussions had during the *travaux préparatoires* of whether play and education should be separated or treated together.¹³⁸ Other references to the right to play were made under the headings of "General Principles" (three), "Special protection measures" (four), "Disability, Basic health and welfare"/"Basic health and welfare"/"Children with disabilities" (six), and other focused topics such as "Violence against children" (one) *inter alia*. On examining the content of the texts, five themes became evident as useful measures for coding: implementation, inequalities, child development/importance of play, critical or negative comments, and mention of GC17.

Of these themes the largest was 'implementation', raised in 79 Concluding Observations. These references varied in focus and emphasis, with some

¹³⁸ Section 2

offering merely a general statement such as 'the Committee recommends that the State party strengthen its efforts to guarantee the right of the child to rest and leisure and to engage in age-appropriate recreational activities, cultural life and the arts, based on the principles of inclusion, participation and non-discrimination'.¹³⁹ Others offered more directed guidance such as promotion of 'children's access to free, unstructured, imaginative play outside, especially in urban environments'¹⁴⁰ or 'awareness-raising programmes and public campaigns to change the perception of and attitudes towards... play'.¹⁴¹ Implementation recommendations included those echoed throughout GC17, and address some of the challenges discussed in Chapter 3. These included recommendations on policies and resource allocation,¹⁴² ensuring safe access to play space,¹⁴³ affordability of play opportunities and spaces,¹⁴⁴ urban planning¹⁴⁵ and measures to address scholarisation of childhood.¹⁴⁶ This suggests an approach of the Committee that is eager to address challenges facing the realisation of the right to play through providing guided recommendations to individual State parties for the implementation of the right.

Comments that were critical of or negative about state performance arose in 43 Concluding Observations. These references expressed concern about factors hampering the child's full enjoyment of their right to play. These included apprehension over the presence of land mines in areas where

¹³⁹ For example: ComRC, 'Concluding Observations on the combined Second and Third Reports of Botswana' (26 June 2019) CRC/C/BWA/CO/2-3

¹⁴⁰ ComRC, 'Concluding Observations on the Sixth Periodic Report of Hungary' (3 March 2020) CRC/C/HUN/CO/6

¹⁴¹ ComRC, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Republic of Korea' (24 October 2019) CRC/C/KOR/CO/5-6

¹⁴² ComRC, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Bhutan' (2 June 2017) CRC/C/BTN/CO/3-5

¹⁴³ ComRC, 'Concluding Observations on the Combined Fourth and Fifth Periodic Report of Lebanon' (22 June 2017) CRC/C/LBN/CO/4-5

¹⁴⁴ ComRC, 'Concluding Observation on the Third to Fifth Periodic Reports of Latvia' (14 March 2016) CRC/C/LVA/CO/3-5

¹⁴⁵ ComRC, 'Concluding Observations: Albania' (31 March 2005) CRC/C/15/Add.249

¹⁴⁶ ComRC, 'Concluding Observations: Thailand' (17 March 2006) CRC/C/THA/CO/2

children play;¹⁴⁷ a lack of adequate play space;¹⁴⁸ the competitive nature of education;¹⁴⁹ discriminative access to play;¹⁵⁰ lack of time for play;¹⁵¹ and backward steps in implementation such as the removal of play policies.¹⁵² These comments show that the Committee takes an approach to its critique of the realisation of the right to play that is both broad in the scope of measures it is willing to critique, and focused for specific contexts. The frequency of comments that were critical or negative of state performance shows that the Committee is prepared to be critical and challenge states on negative practices affecting the right to play.

The coding theme of 'inequalities' in the context of the right to play arose in 42 Concluding Observations. Such references occurred in the context of discussion of specific groups experiencing unequal access to, or discriminatory behaviour towards, their right to play, or regarding implementation of their right. These groups include those outside mainstream education (particularly primary education), child labourers or street children;¹⁵³ disabled children;¹⁵⁴ children in hospital;¹⁵⁵ the girl child;¹⁵⁶ and refugee children.¹⁵⁷ These references, and their frequency, show that the Committee is prepared to explore and underscore the

¹⁴⁷ ComRC, 'Concluding Observations: Maldives' (13 July 2007) CRC/C/MDV/CO/3

¹⁴⁸ For example: ComRC, 'Concluding Observations: Belgium' (18 June 2010) CRC/C/BEL/CO/3-4

¹⁴⁹ For example: ComRC, 'Concluding Observations: Republic of Korea' (2 February 2012) CRC/C/KOR/CO/3-4

¹⁵⁰ For example: ComRC 'Concluding Observations on the combined third and fourth periodic reports of India', (7 July 2014) CRC/C/IND/CO/3-4

¹⁵¹ For example: CRC/C/KOR/CO/5-6 (n141)

¹⁵² For example: ComRC, 'Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' (12 July 2016) CRC/C/GBR/CO/5

¹⁵³ ComRC, 'Concluding Observations: Philippines' (21 September 2005) CRC/C/15/Add.259

¹⁵⁴ For example: ComRC 'Concluding Observations on the combined second and third periodic reports of Serbia' (7 March 2017) CRC/C/SRB/CO/2-3

¹⁵⁵ ComRC, 'Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland: Dependent Territories: Hong Kong' (30 October 1996) CRC/C/15/Add.63

¹⁵⁶ For example: ComRC, 'Concluding Observations on the combined second to fourth periodic reports of Zambia' (14 March 2016) CRC/C/ZMB/CO/2-4

¹⁵⁷ For example: CRC/C/IND/CO/3-4 (n150)

experience of disadvantaged groups in their enjoyment of the right to play, and is not limiting its assessment to broad policies and practices.

Only 11 Concluding Observations fell under the coding theme 'development/importance of play'. The intention of studying this theme within the coding exercise was to examine the space given by the Committee to refer to play's value for children. Less than 2% of the Concluding Observations address this. One reason for this may be the nature of Concluding Observations: they are to examine the states implementation of children's rights, not to emphasise why they are important *per se*. However, it may be valuable to highlight the importance of play for children in Concluding Observations, particularly for states that are criticised in their fulfilment of obligations towards the right. Some comments given on the importance of play referred to a need to include play in education contexts, to ensure the 'all-round development' of the child.¹⁵⁸ This is noteworthy as it reflects discussion held during the *travaux préparatoires* on the value of play for the holistic development of the child, and of the relationship between play and education.¹⁵⁹

The final theme used for coding was 'reference to GC17'. 147 Concluding Observations have been produced since GC17.¹⁶⁰ Only 44 of these referred to GC17, and only 60 referenced a right to play at all. It is possible to argue that there has been a change in approach of the Committee towards the right to play in its Concluding Observations since the production of GC17 due to the fact that over half of the Committee's references to play can be found

¹⁵⁸ For example: ComRC, 'Concluding Observations: China (including Hong Kong and Macau Special Administrative Regions)' (24 November 2005) CRC/C/CHN/CO/2

¹⁵⁹ Chapter 3 Section 2

¹⁶⁰ ComRC, 'General Comment No.17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art.31)' (2013) CRC/C/GC/17 (GC17) was adopted on the 17th April 2013, and all Concluding Observations in 2013 were produced subsequently.

in Concluding Observations since GC17. This increase in frequency could suggest a desire for greater emphasis on and implementation of the right to play. The number of references to the right to play in each year is summarised in the table below:

Year	No. of Concluding Observations	No. of Concluding Observations referring to play	No. of paragraphs per year referring to play
2020*	9	6	7
2019	17	11	13
2018	17	6	7
2017	21	9	9
2016	27	9	13
2015	24	8	12
2014	16	6	9
2013	16	5	7
2012	23	2	2
2011	16	2	2
2010	23	3	4
2009	17	4	9
2008	10	4	7
2007	12	2	4
2006	27	5	7
2005	27	7	12
2004	26	0	0
2003	27	2	2
2002	27	2	2
2001	27	2	3
2000	27	1	2
1999	17	1	2
1998	14	0	0
1997	18	1	2
1996	19	2	2
1995	18	0	0
1994	16	0	0

1993	11	0	0
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*2020 includes data up to 30 April 2020 only.

Most references to the right to play in Concluding Observations were made in the past six years, although there was a marked decrease in 2018 compared to the years prior and since. That references to the right to play occur in only 40% of Concluding Observations produced since GC17 suggests limited impact of the General Comment on the Committee's approach, an impression supported by the few references made to GC17 itself in the Concluding Observations following its publication (less than 30%). Nevertheless, there is a considerable increase in references to the right to play in the last six years. This suggests that the impact of GC17 on the Committee's engagement with the right to play in its Concluding Observations may have been delayed, and that the Committee has adapted its approach to the right to play to examine it more systematically.

The coding exercise revealed that the Committee has focused on recommendations for implementation and has critiqued poor implementation or factors hindering enjoyment of the right to play. The Committee emphasised inequalities in enjoyment of the right to play to ensure that broad policies are not discriminatory, and that barriers are removed for marginalised or vulnerable children to realise their right. The Committee engaged minimally with the importance of the right to play. Whilst the increase in references to the right to play since the publication of GC17 suggests a positive impact of the General Comment on the Committee's engagement with the right, more consistent engagement with the right would be beneficial to ensure full realisation of the right to play in each State party.

3.3.2. General Comments

Of the 24 General Comments issued to date, nine refer to the right to play (37.5%). This is a much larger percentage than that found in both the Concluding Observations and DGDs. General Comments containing mention of the right to play include General Comment 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin;¹⁶¹ General Comment 7 on Implementing Child Rights in Early Childhood;¹⁶² General Comment 9 on the Rights of Children with Disabilities;¹⁶³ General Comment 12 on the Right of the Child to be Heard;¹⁶⁴ General Comment 14 on the Right of the Child to have His or Her Best Interests taken as a Primary Consideration;¹⁶⁵ General Comment 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights;¹⁶⁶ General Comment 17 on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts (art.31); General Comment 20 on the Implementation of the Rights of the Child during Adolescence;¹⁶⁷ and General Comment 21 on Children in Street Situations.¹⁶⁸

No mention of the right to play was made in the General Comments on the aims of education (GC1),¹⁶⁹ adolescent health and development (GC4),¹⁷⁰ and the right of the child to the enjoyment of the highest attainable standard

¹⁶¹ ComRC, 'General Comment No.6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin' (2005) CRC/GC/2005/6 (GC6)

¹⁶² GC7

¹⁶³ ComRC, 'General Comment No.9 on the Rights of Children with Disabilities' (2007) CRC/C/GC/9/Corr.1 (GC9)

¹⁶⁴ ComRC, 'General Comment No.12 on the Right of the Child to be Heard' (2009) CRC/C/GC/12 (GC12)

¹⁶⁵ ComRC, 'General Comment No.14 on the Right of the Child to have His or Her Best Interests Taken as a Primary Consideration' (2013) CRC/C/GC/14 (GC14)

¹⁶⁶ ComRC, 'General Comment No.16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights' (2013) CRC/C/GC/16 (GC16)

¹⁶⁷ ComRC, 'General Comment No.20 on the Implementation of the Rights of the Child during Adolescence' (2016) CRC/C/GC/20 (GC20)

¹⁶⁸ ComRC, 'General Comment No.21 on Children in Street Situations' (2017) CRC/C/GC/21 (GC21)

¹⁶⁹ ComRC, 'General Comment No.1 on the Aims of Education (art.29)' (2001) CRC/GC/2001/1 (GC1)

¹⁷⁰ ComRC, 'General Comment No.4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child' (2003) CRC/GC/2003/4 (GC4)

of health (GC15).¹⁷¹ Such absence is notable due to the important relationships between play and education, and play and health.¹⁷² It reflects a tendency to prioritise play for young children but not for adolescents.¹⁷³ The absence of reference to the right to play in GC15 is remarkable due to its adoption on the same day as GC17. In contrast, the right was mentioned in the 2016 GC20 on adolescence, suggesting a broadened approach to the right to play, and perhaps an increased understanding of its importance for adolescents over the 13 years between GC4 and GC20.

GC6 was the first General Comment to mention the right to play. The Committee referred to the right in the context of children in detention, stating that 'they also have the right to recreation and play as provided for in article 31 of the Convention'.¹⁷⁴ Whilst the Committee chose to highlight Article 31 rights, the comment reads as though it has simply been tagged on. This is the only statement referring to the right to play in this important General Comment relating to a group of children particularly at risk of facing gaps in the protection of their rights.¹⁷⁵

GC7, adopted in the same year, saw greater engagement with the right to play.¹⁷⁶ In this General Comment the Committee highlighted young children's particular requirements in terms of 'time and space for social play', and that such requirements 'can best be planned for' through early childhood policies, laws and programmes, which should be assessed.¹⁷⁷ The Committee emphasised measures necessary for the realisation of the right to play for

¹⁷¹ ComRC, 'General Comment No.15 on the right of the child to the enjoyment of the highest attainable standard of health (art.24)' (2013) CRC/C/GC/15

¹⁷² Chapter 2, Section 2, on play and education, and play and health

¹⁷³ Chapter 3 and 6 on the tendency to prioritise play for young children but not for adolescents.

¹⁷⁴ GC6 para.63

¹⁷⁵ GC6 para.3

¹⁷⁶ GC7 paras.5, 10, 11(b), 20, and 34

¹⁷⁷ Ibid para.5

young children, stating a need to include play in policies, legislation and programmes. The relationship between the right to play and the right to survival and development was emphasised, with the Committee arguing that the latter could only be implemented in a holistic manner by enforcing other rights including the right to play.¹⁷⁸ This underscores the interrelated and interdependent nature of these rights, supports the discussion in Chapter 2 on the importance of play for the holistic development of the child, and similarly highlights some discussion from the *travaux préparatoires*.¹⁷⁹ The Committee engaged in GC7 with issues of discrimination and play, arguing that discrimination may occur through restricted opportunities for play.¹⁸⁰ It highlighted 'extensive (and intensive) parental responsibilities' in early childhood, including in the provision of opportunities for play, and the need to support parents.¹⁸¹ This links responsibilities and duties of States parties to ensure realisation of children's rights with direct responsibilities of parents over the care of their children.¹⁸²

GC7 included a specific paragraph on the '[r]ight to rest, leisure and play'.¹⁸³ This noted the 'insufficient attention' given to the implementation of the right to play, and highlighted play as 'distinctive feature' of early childhood.¹⁸⁴ The Committee emphasised that children 'both enjoy and challenge their current capacities' through play, and that the value of play in early childhood education is widely recognised.¹⁸⁵ Some challenges facing the realisation of the right to play were then raised, including limited opportunities for young children to play in 'child-centred, secure, supportive, stimulating and stress-

¹⁷⁸ Ibid para.10

¹⁷⁹ Chapter 2, and Section 2 of this chapter.

¹⁸⁰ GC7 para.11(b)

¹⁸¹ Ibid para.20

¹⁸² Discussed further in Chapter 5

¹⁸³ GC7 para.34

¹⁸⁴ Ibid

¹⁸⁵ Ibid; For evidence, Chapter 2

free environments'.¹⁸⁶ Particular focus was given to safe play space in urban environments; 'competitive schooling'; and 'excessive domestic chores (especially affecting girls)'.¹⁸⁷ It recommended that obstacles to enjoying the right to play by the youngest children be identified and removed, and greater attention and allocation of resources be given to implement the right.¹⁸⁸ The Committee emphasised that consultations with children should be had when 'planning for towns, and leisure and play facilities', in line with Article 12 of the Convention.¹⁸⁹ These comments show an approach that emphasises measures necessary to implement the right to play and general principles of the Convention, namely non-discrimination and participation.¹⁹⁰ It demonstrates a belief in the importance of play for the holistic development of the child, echoing the *travaux préparatoires*.¹⁹¹

GC9 addressed the right to play in the context of disabilities, highlighting the value of play as 'the best source of learning various skills, including social skills'.¹⁹² The Committee argued that 'attainment of full inclusion of children with disabilities in the society' is realised when the right to play, with other children, is realised.¹⁹³ It recommended that training for play should be included for school-aged children with disabilities, although did not expand on what this should include.¹⁹⁴ These remarks emphasise a need for implementation measures to not only be non-discriminatory, but to enable social interaction and social inclusion, demonstrating an approach of the

¹⁸⁶ GC7 para.34

¹⁸⁷ Ibid

¹⁸⁸ Ibid

¹⁸⁹ Ibid

¹⁹⁰ For further discussion of these principles, Chapter 5

¹⁹¹ Discussed in Section 2

¹⁹² GC9 para.70

¹⁹³ Ibid

¹⁹⁴ Ibid

Committee that reflects the general principles of the CRC as well as an understanding of the importance of play for children's social development.¹⁹⁵

In GC12 the Committee described play as a form of non-verbal communication, particularly important in respecting young children's right to be heard.¹⁹⁶ The Committee emphasised the need for children to play 'for their development and socialization', and expressed a need to take 'into account children's preferences and capacities' when designing play activities.¹⁹⁷ It highlighted a requirement to consult children 'regarding the accessibility and appropriateness of play and recreation facilities', suggesting an understanding by the Committee that children have an important insight in the implementation of their right to play.¹⁹⁸ The Committee asserted that human rights must be 'practised in the institutions in which the child learns, plays and lives',¹⁹⁹ showing an approach of the Committee that underscores the importance of play for children, and the role of Article 12 in implementing the right to play.

GC14 *on the right of the child to have his or her best interests taken as a primary consideration* included only one reference to the right to play. The Committee highlighted that the terms 'public or private social welfare institutions' should not be narrowly construed or limited to institutions relating to play.²⁰⁰ The Committee states that the best interests principles is aimed at ensuring 'the holistic development of the child'.²⁰¹ In light of this, it is noteworthy that such limited mention of the right to play is made in this

¹⁹⁵ For further discussion of general principles, Chapter 5; on the importance of play for children's social development see Chapter 2 Section 3

¹⁹⁶ GC12 para.21. It is arguable that the Committee see play as a useful form of communication for disabled children (see para.115)

¹⁹⁷ Ibid para.115

¹⁹⁸ Ibid paras.115 and 128

¹⁹⁹ Ibid para.108

²⁰⁰ GC14 para.26

²⁰¹ Ibid paras.4, 5 and 42

General Comment due to the vital importance of the right to play for the child's holistic development. The lack of attention placed on the right to play in a General Comment focusing the best interests of the child seems to reject the object and purpose of the right found in the *travaux préparatoires*, namely for the holistic development of the child. Alongside general principles, GC14 discusses the best interests principle with other rights such as the right to education.²⁰² It exhibits an approach of the Committee that risks undermining the importance of the right to play for children. It could be expected that if the Committee echoed the views of the drafters greater emphasis and priority would be afforded to the right to play in a General Comment on the best interests of the child.

GC16 offered little focus on the right to play, with only two references to the right. The first related to a need to consider the impact of adults' long working hours on children's enjoyment of the right to play due to a potential by-product of children 'tak[ing] on their parent's domestic and childcare obligations, which can negatively impact their right to education and to play'.²⁰³ The Committee highlighted that such obligations may particularly impact the girl child's right to play.²⁰⁴ The General Comment emphasised the potential impact of the 'informal economy' on preventing adequate play and infringing upon Article 31.²⁰⁵ This is a considered approach of the Committee, addressing a broad range of potential challenges to the implementation of the right to play.

GC20 on the implementation of the rights of the child during adolescence saw the first examination of the right to play from the perspective of

²⁰² Ibid para.77-78

²⁰³ GC16 para.19

²⁰⁴ Ibid

²⁰⁵ Ibid para.395-7

adolescents by the Committee in a General Comment. The Committee began by highlighting the fact that adolescents often use online platforms for play and the need to ensure access to such media, suggesting a requirement for a varied approach to implementation.²⁰⁶ The Committee emphasised the text of Article 31(1) which refers to 'play and recreational activities appropriate to the age of the child'.²⁰⁷ The Committee engaged with particular challenges facing adolescent caregivers, and the need for extra support for this group of children to enjoy their right to play.²⁰⁸ Paragraph 75 of the General Comment delivered a focused discussion of the right to play and adolescence, with the Committee emphasising the fundamental role of play, both online and offline, for the 'exploration of identity, enabling adolescents to explore their culture, forge new artistic forms, create relationships and evolve as human beings'.²⁰⁹

GC20 saw the Committee engage more substantially with the importance of play for (adolescent) children, and not simply measures of implementation. The Committee stressed the fact that the right to play has been 'widely neglected in adolescence, especially for girls', recognising that it is necessary to ensure the right to play is realised for children of all ages, and that special measures are required to protect the girl child's enjoyment of these rights.²¹⁰ The Committee emphasised a need to balance an adolescent's 'right to perform light work' with their right to play, linking to the child's right to work under Article 32.²¹¹ This General Comment included the first reference to GC17.²¹²

²⁰⁶ GC20 para.47

²⁰⁷ Ibid

²⁰⁸ Ibid para.55

²⁰⁹ Ibid para.75

²¹⁰ Ibid

²¹¹ Ibid para.85; On children's work and play, Chapters 3 and 6

²¹² Ibid para.75

GC21 *on children in street situations* is the most recent General Comment to include reference to the right to play. The Committee stressed the importance of association in public space for street children's enjoyment of the right to play.²¹³ It discussed the right to play in a dedicated paragraph on the rights to rest, play and leisure.²¹⁴ It reflected upon the creativity used by street children 'to utilise the informal setting of the streets for play opportunities', referencing GC17 in a footnote, and emphasised non-discrimination principles and the need to ensure street children are not 'excluded' from play spaces.²¹⁵ GC21 positively engaged with the right to play and the unique situation of street children, suggesting a commitment by the Committee to include examination of the right to play for disadvantaged and vulnerable children. More thorough and extensive engagement would have addressed a broader variety of factors and their impact on the right to play.

This analysis of General Comments demonstrates that the Committee repeatedly highlighted the role of play for the holistic development of the child, and the need to afford the right to play greater attention. This echoes the *travaux préparatoires* in highlighting the importance of the right to play for children's holistic development. The Committee demonstrated varied commitment to addressing challenges faced by particularly vulnerable groups of children. It addressed the right to play in General Comments aimed at both the early years²¹⁶ and at adolescents,²¹⁷ despite neglecting the right to play in its first General Comment relating to adolescence, suggesting a renewed understanding that the right to play should be

²¹³ GC21 para.38

²¹⁴ Ibid para.56

²¹⁵ Ibid para.56

²¹⁶ GC7

²¹⁷ GC20

afforded to all children and that implementation must be 'appropriate to the age of the child'. This indicates a turning point in the Committee's treatment of the right to play, and a move towards a more equal weighting of the right to play alongside other Convention rights.

However, following the publication of GC21 on children in street situations, the Committee neglected to address the right to play in its General Comments on children in the context of international migration,²¹⁸ and children in the justice system.²¹⁹ These groups face distinct and severe challenges to their right to play as a result of unique situations, justifying further engagement that the Committee has failed to deliver. Limited attention afforded to the right to play in General Comments overall echoes this neglect. If the right to play was truly viewed as vital for children and their holistic development would it not be afforded greater attention in a consistent manner?

3.3.3. Days of General Discussion

To assess the Committee's approach to the right to play in Days of General Discussion, all reports and recommendations from the 23 DGDs to date were assessed for references to the right to play. The findings show that the right to play was mentioned in reports or recommendations for only seven DGDs; the 1997 Day of General Discussion on Children with Disabilities;²²⁰ 2004

²¹⁸ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and ComRC, 'Joint General Comment No.3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No.22 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' (2017) CMW/C/GC/3-CRC/C/GC/22; CMW and ComRC, 'Joint General Comment No.4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No.23 of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return' (2017) CMW/C/GC/4-CRC/C/GC/23

²¹⁹ ComRC, 'General Comment No.24 on Children's Rights in the Child Justice System' (2019) CRC/C/GC/24

²²⁰ ComRC, 'Report on the Sixteenth Session' (26 November 1997) CRC/C/69, 51-61

Day of General Discussion on Implementing Child Rights in Early Childhood;²²¹ 2008 Day of General Discussion on the Right of the Child to Education in Emergency Situations;²²² 2011 Day of General Discussion on Children of Incarcerated Parents;²²³ 2014 Day of General Discussion on Digital Media and Children's Rights;²²⁴ 2016 Day of General Discussion on Children's Rights and the Environment;²²⁵ and 2018 Day of General Discussion on Protecting and Empowering Children as Human Rights Defenders.²²⁶

The 1997 DGD report on children with disabilities referred to the right to play twice.²²⁷ These references address the historical denial of access to opportunities for play, and the need to improve access to play including 'play centres', for disabled children.²²⁸ No mention was made of the value or importance of play for disabled children, despite emphasis on the need to improve their access to play. It could have been expected that some explanation as to why play is important for disabled children would have been included due to this emphasis. The DGD shows a desire of the Committee to see improvement in the implementation and inclusivity of the right to play for disabled children.

For the 2004 DGD on implementing children's rights in early childhood the Committee produced a partial summary record and separate

²²¹ ComRC, 'Summary Record (Partial) of the 979th Meeting: Day of General Discussion implementing child rights in early childhood' (22 September 2004) CRC/C/SR.979; DGD 2004

²²² ComRC, 'Day of General Discussion on the right of the child to education in emergency situations: Recommendations' (19 September 2008) (DGD 2008)

²²³ ComRC, 'Report and Recommendations of the Day of General Discussion "Children of incarcerated parents"' (30 September 2011) (DGD 2011)

²²⁴ ComRC, 'Report of the 2014 Day of General Discussion "Digital media and children's rights"' (12 September 2014) (DGD 2014)

²²⁵ ComRC, 'Report of the 2016 Day of General Discussion: Children's Rights and the Environment' (23 September 2016) (DGD 2016)

²²⁶ ComRC 'Day of General Discussion 2018 Protecting and Empowering Children as Human Rights Defenders Report' (28 September 2018) (DGD 2018)

²²⁷ CRC/C/69 (n220) 51-61

²²⁸ Ibid paras.312 and 330

recommendations. It referred to the right to play once in each document.²²⁹ The reference to the right to play in the summary report can be found in paragraph 5 of the report. Despite the right to play described as being of 'particular concern', it was not given the same level of attention as rights such as education and healthcare. It was simply mentioned in a list of 'other rights'.²³⁰ The reference to the right to play in the recommendations gave more substantive discussion to the right.²³¹ It highlighted the 'insufficient attention' that had been given by both States parties and 'others' to the implementation of the right, and raised this in the context of other Article 31 rights.²³² The Committee drew attention to the developmental importance of the right to play, described the status of the right as 'endangered', and called on 'States parties, [NGOs] and private actors' to remove 'obstacles' and 'pay greater attention and allocate adequate resources (human and financial) to the implementation of the right to rest, leisure and play'.²³³ This addressed reasons for the right to play, challenges to the right, and measures of implementation, showing significantly deeper engagement by the Committee with the right to play than in the 1997 DGD.

The 2008 DGD report on the right of the child to education in emergency situations refers to the right to play in one paragraph,²³⁴ despite the important role of play in situations of trauma, and the educational benefits of play.²³⁵ This important role was highlighted by the Committee in the report, stating that 'play can be very important in emergency situations and can help the child recover from emotional trauma'.²³⁶ The absence of further

²²⁹ CRC/C/SR.979 (n221) para.5; DGD 2004 para.9

²³⁰ CRC/C/SR.979 (n221) para.5

²³¹ DGD 2004 para.9

²³² Ibid

²³³ Ibid

²³⁴ DGD 2008 para.19

²³⁵ On educational benefits of play, Chapter 2; On trauma and play, Chapter 3 Section 4.1

²³⁶ DGD 2018 para.19

discussion is noteworthy considering the Committee's reference to the right to play was in the context of the need 'to address the often neglected article 31 of the Convention'.²³⁷ The Committee perpetuated this neglect by not expanding upon the ways in which the right to play should be realised in the context of education in emergency situations. The Committee appears in this instance to have merely offered lip-service to the right.

The report and recommendations for the 2011 DGD on children of incarcerated parents did not include an explicit reference to the right to play, merely stating that children residing with incarcerated parents should be provided adequate and sufficient services, including playgrounds.²³⁸ This continued trend of DGD neglect of the right to play suggests that the extended focus on the right to play in the 2004 DGD report and recommendations was a one-off and not a turning-point in the Committee's approach to the right, supported by the fact that the Committee made no mention of the right to play in the three DGD reports and recommendations between 2004 and 2008.

The 2014 DGD report on digital media and children's rights referred to the right to play in four paragraphs.²³⁹ The first gave an overview of the objectives for the DGD, and emphasised the right to play.²⁴⁰ This provided a platform for the right to play to be considered more extensively throughout. The second paragraph to refer to the right to play suggested that children make no 'distinction between the online and real parts of their lives... [in] playing games'.²⁴¹ The following reference suggested that 'the online environment... has replaced "the street" as the playground for children' and

²³⁷ Ibid

²³⁸ DGD 2011 para.12

²³⁹ DGD 2014

²⁴⁰ Ibid para.8

²⁴¹ Ibid para.29

that children use the internet to play.²⁴² Here discussion focused on digital technologies and the increasing role they have in children's enjoyment of the right to play.²⁴³ This was emphasised by the Committee in its General Recommendations to the DGD, which called for states to 'recognise the importance of access to, and use of, digital media and ICTs for children and their potential to promote... the rights to... play'.²⁴⁴ The findings showed an increase in emphasis on the right to play by the Committee and an approach that addresses the need to explore how and where the right to play is enjoyed, and measures of implementation in diverse contexts.

The 2016 DGD report and recommendations on children's rights and the environment followed in the steps of the 2014 DGD in offering more space to the right to play. This suggests a shifting approach of the Committee towards the right to play to include the right in a more consistent manner. The report saw the Committee highlight environmental harm and its relationship to violations of the right to play.²⁴⁵ It focused significant attention on the need to ensure child-friendly play environments.²⁴⁶ It highlighted the implicit relationship between environmental protection and the right to play; the need to ensure a 'decent standard of... play'; the need for states to 'mediate exposure to environmental risk factors' in places of play; and the diminishing opportunities for outdoor play and the related increase in 'manmade obstacles' for such play.²⁴⁷ It discussed '[c]onnection with nature [as] an underlying determinant of the right... to play',²⁴⁸ and the necessity for municipal planning to prioritise 'enabling access to environments which increase all children's freedom to play' and 'orientate

²⁴² Ibid para.63

²⁴³ Ibid

²⁴⁴ Ibid para.85

²⁴⁵ DGD 2016 4

²⁴⁶ Ibid 13-14

²⁴⁷ Ibid 7-9, 13-14

²⁴⁸ Ibid 14

planning and regulations' to ensure the play- and child-friendliness of all environments'.²⁴⁹ The Committee included discussion and focus on the right to play as well as on measures of implementation, showing a level of detail and attention not previously offered to the right.

The most recent DGD (2018) on protecting and empowering children as human rights defenders reflected a varied approach to the right to play. The report of the DGD included several references to the right to play although the recommendations from the Committee at the end of the report made no mention of the right. The report included records of discussion on children's success in ensuring 'the building of the first playground in [a] hometown'.²⁵⁰ It reflected upon children's ability to 'identify and address human rights issues [including relating to the] right to play'.²⁵¹ The report remarked on the impact and value of play, noting 'that children are empowered through their right to play, "they forget their problems when they play"'.²⁵² This comment demonstrates the strength and value of effective implementation of the right to play for the protection and empowerment of human rights defenders. As such, it is concerning that the Committee made no reference to the right to play in its final recommendations.

The findings show that increased reference has been made to the right to play in the last ten years than previously, with five out of the seven DGDs mentioning the right to play occurring over the past decade. This suggests a change of focus and increased emphasis on the right to play as time has gone on. This is supported by the empirical findings, demonstrating a significant increase in engagement with the right during the 2014 and 2016

²⁴⁹ Ibid 32

²⁵⁰ Ibid 13

²⁵¹ Ibid 16

²⁵² Ibid 24

DGDs. These findings suggest that the Committee may have reached a turning-point in the focus it gives the historically neglected right to play. However, the lack of reference to the right to play within the recommendations of the most recent DGD requires that any such claim be considered cautiously. More evidence of engagement with the right to play in future DGDs would be necessary to consider the turning-point significant and long term.

4. Conclusion

The right to play was perceived by drafters as vital to the holistic development of the child and constituting an essential aspect of childhood. This underscores the significance of the right to play and the importance of ensuring the right to play is realised for all children. It suggests the manner in which the right to play should be addressed by the Committee: if the right to play is vital to the holistic development of the child, it must therefore be accorded high levels of engagement and examination. It must not be treated as a luxury right as such a status was clearly not intended by the drafters of the Declaration and the Convention.

Subsequent work of the Committee initially afforded little attention to the right to play. This undermined the importance of the right to play for children. David, in his review of Concluding Observations from 1991 to 2006, argued that 'Article 31 may well be the most neglected provision by the CRC Committee since it started its monitoring work in 1991'.²⁵³ The Committee's engagement with the right to play since the issuing of GC17 has increased. This could be viewed as signalling a change in the right to play's status as luxury or forgotten. However, the extent to which this can be viewed as a

²⁵³ David (n46) 17

turning point is limited due to a lack of consistent engagement with the right across Concluding Observations, General Comments and DGDs. The attention afforded to the right to play in Concluding Observations in particular must increase to reveal a clear shift in practice. The purpose of Concluding Observations makes consistent engagement with the right in these documents of vital importance. If the Committee does not address the right to play in a state's Concluding Observations, it is unlikely that the state will prioritise its implementation.

Chapter 5: The Scope and Content of the Right to Play

1. Introduction

This chapter builds upon previous chapters to examine what is understood by the right to play as states seek to implement the right. It begins by considering the scope of the right, identifying to whom the right is applicable, before turning to investigate the content of the right to play. The relationship of the right to play to the general principles is considered, as well as elements of the text of Article 31 that relate the right to play: 'to engage in', and 'appropriate to the age of the child'. It does this to draw out how the right should be implemented and measured. It utilises the Availability, Accessibility, Acceptability and Quality (AAAQ) framework to outline the content of the right to play and investigates the obligations pertaining to the right to play and the application of Article 4 in this context. This chapter provides a discussion of the obligations pertaining to the right to play and reflects on the work of the Committee in General Comment 17.

The topic of parental responsibility and parents' role in supporting the realisation of the right to play has been addressed. There are several principles central to this that must be addressed here. The Convention frames the position of the child within the family in a way that is in line with general international human rights law, and it is expected that most primary needs will be met in this context.¹ Parents thus have a role as duty bearers. Within this context states are expected, and obliged, to provide assistance to parents and other legal guardians to enable them to meet their

¹ See, e.g., UNCRC Preamble, Articles 5, 18(1 and 2), 19, 27(2 and 3)

responsibilities under the Convention and must provide evidence and justification for measures taken to assist parents.² Tobin and Seow refer to this as a 'relational conception of the family whereby parents are entitled to call on the state, and by implication the broader community, to ensure the effective care of their children'.³ Whilst the Convention acknowledges parental responsibility in the realisation of children's rights, 'it is States Parties, not parents, which have the ultimate responsibility under international human rights law' for the realisation of the obligations under the Convention.⁴ In Chapter 3 reference was made to responsibility placed on children, by the Committee, in ensuring their own safety during play.⁵ Whilst some responsibility may be envisaged for children in terms of realisation of their rights under Article 5, ultimate responsibility remains with the State party to the CRC as the primary duty bearer.

2. Scope

The right to play applies to *all* human beings 'below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.⁶ The limitation within the text of Article 1, that national laws may allow for the age of majority below 18, is designed to account for cultural and religious differences in the notion of childhood and the age of majority.⁷ The Committee states that conformity with the Convention includes movement towards raising national ages of majority to 18.⁸ Acknowledging

² See, e.g., UNCRC Articles 18(2), 24(2(e-f)), 27(3)

³ J Tobin and F Seow, 'Article 18: Parental Responsibilities and State Assistance' in J Tobin (ed.) *The UN Convention on the Rights of the Child: A Commentary* (OUP, 2019) 648

⁴ A Nolan, 'Economic and Social Rights, Budgets and the Convention on the Rights of the Child' [2013] 21 IJCR 248, 253

⁵ Chapter 3, Section 2.1, discussing Committee on the Rights of the Child (ComRC) 'General Comment No.17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art.31)' (2013) CRC/C/GC/17 (GC17) para.39

⁶ Article 1 UNCRC

⁷ G Van Bueren, *The International Law on the Rights of the Child*, (Nijhoff, 1998) 37

⁸ For example: ComRC, 'Concluding Observations: Cuba' (3 August 2011) CRC/C/CUB/CO/2 para.23 and ComRC, 'Concluding Observations: Nigeria' (21 June 2010) CRC/C/NGA/CO/3-4 para.27. For discussion and critique of the Committee's approach to this matter, see D

the application of the right to play to all those under the age of 18 is of particular importance given the tendency for play-related measures to be directed towards young children. The right to play applies to adolescents as well as to young children.⁹

The application of the right to play is to be determined in line with the Convention as a whole, including the general principles. Central to the issue of scope is the principle of non-discrimination. The prescription that the rights under the Convention apply to all children must be viewed together with the text of Article 2 of the Convention. This requires that states 'respect and ensure' the rights in the Convention

'to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'.¹⁰

Under the principles of equality and non-discrimination, in some circumstances it may be necessary to treat children differently to enable their equal enjoyment of their rights. This is understood as relating to 'special measures... aimed at redressing material inequalities or improving *de facto* equality'.¹¹ Regarding the right to play, the Committee highlights 16 groups as requiring 'particular attention' or assistance in the realisation of their right to play.¹² The scope of this need for 'particular attention' is thus

Archard and J Tobin, 'Article 1: The Definition of a Child' in J Tobin (ed.) *The UN Convention on the Rights of the Child: A Commentary* (OUP, 2019) 28-29; S Besson and E Kleber 'Article 2: The Right to Non-Discrimination' in J Tobin (ed.) *The UN Convention on the Rights of the Child: A Commentary* (OUP, 2019) 54, who suggest 'the age-based definition in the Convention [is] authoritative'.

⁹ Adolescence and the right to play, Chapter 3

¹⁰ Article 2 UNCRC

¹¹ Besson and Kleber (n8) 64; S Besson (2005) 'The Principle of Non-Discrimination in the Convention on the Rights of the Child', 13 *IJCR* 433-461, especially 439

¹² ComRC GC17 para.16 and para.6 Chapter 3, Section 1 lists the 16 groups.

far reaching. The Committee focuses its discussion in GC17 on six groups of children, discussed in Chapter 3. The principles of non-discrimination and the text of Article 1 ensure that the scope of the right to play extends to *all children*.

3. Content

To understand what constitutes the content of the right to play, this section addresses the interrelated nature of the rights under the Convention. It focuses on specific textual elements of Article 31, examining what they reveal of the content of the right to play. It then employs the AAAQ framework to draw out the content of the right to play. The definition of play was considered in Chapter 1. The obligations pertaining to the right to play shed further light on aspects of the content of the right to play.

3.1. Indivisible, interrelated, and interdependent

The 1993 Vienna Declaration and Programme of Action states that '[a]ll human rights are universal, indivisible and interdependent and interrelated'.¹³ This has been compounded by the General Assembly and the Committee, adding that all human rights are of equal importance and should be treated as such.¹⁴ Understanding this relationship does not 'put all rights in a melting-pot where they lose their own distinct character, but [rather] reinforce[s] the validity and impact of all rights'.¹⁵ These statements necessitate that the Convention be seen as a whole, recognising that

¹³ UN General Assembly, *Vienna Declaration and Programme of Action*, (25 June 1993) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>> accessed July 2017, Article 5

¹⁴ UNGA Resolution 60/251 (3 April 2006) preambular para.3; ComRC, 'General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States' (30 October 1991) CRC/C/5 para.9

¹⁵ T Van Boven, 'Categories of Rights', in D Moeckli, S Shah and S Sivakumaran (eds) *International Human Rights Law* (OUP, 2010) 187

implementing, or violating, one right is likely to have an impact on other rights.

The right to play should not be 'considered in isolation',¹⁶ but rather interpretation of the right 'should be prompted by inter-linking all relevant rights recognised in the treaty'.¹⁷ An extensive review of the relationship between the right to play and other Convention rights is warranted, but beyond the scope of this thesis.¹⁸ Discussion here is limited to the general principles of the Convention due to their role in interpreting and implementing the Convention.

The Convention includes four general principles: non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and the right to express views in 'all matters' affecting the child, and to have them given due weight (Article 12).¹⁹ These can be seen as umbrella principles, and act as a lens through which to view and implement all rights in the Convention, including the right to play. The Committee provides some guidance on how the right to play relates to these general principles in GC17.²⁰ The principle of non-discrimination, embodied in Article 2, is discussed throughout this chapter in relation to the scope, content and obligations pertaining to the right to play.

Article 3 of the Convention requires that the child's best interests be a 'primary consideration' in all actions concerning them 'whether undertaken

¹⁶ C Davey and L Lundy, 'Towards Greater Recognition of the Right to Play: An Analysis of Article 31 of the UNCRC', [2011] 25 *Child Soc* 3, 4

¹⁷ P David, A Commentary on the United Nations Convention on the Rights of the Child, Article 31: The Right to Leisure, Play and Culture, (Nijhoff, 2006) para.37

¹⁸ The space needed to fully examine this matter would warrant a thesis, or several. Some matters regarding this have been discussed elsewhere in the thesis e.g. elements of the relationship between the right to education and the right to play are discussed in Chapters 2, 4 and Chapter 5 and 7.

¹⁹ K Hanson and L Lundy, 'Does Exactly What it Says on the Tin?' [2018] 25 *IJCR* 285, dispute the description of these rights as general principles and suggest that Article 5 has an equally important role in interpreting the Convention.

²⁰ ComRC GC17 para.16-19

by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'.²¹ Commentators have referred to this duty as extending to parents and other individual actors with responsibility for the care of the child.²² The right to play is fundamentally linked to the holistic development of the child, and has considerable intrinsic value. This was heavily emphasised in the *travaux préparatoires* and subsequently by the Committee. The Committee argues that the realisation of the right to play 'is, by definition, in the child's best interests', and as such expects its consideration in '[a]ll legislative, policy and budgetary measures, as well as measures relating to environmental or service provision'.²³ Article 3(1) requires that the play that children engage in is in their best interests, a decision that is to be made in line with Articles 5 and 12, as well as the text of Article 31. The reference to 'appropriate to the age of the child' makes clear that the extent to which certain play activities are in the child's best interest will adapt according to the age of the child.

Article 6 of the Convention sets out the right to life, and the right to survival and development ensured to the maximum extent possible.²⁴ The Committee underscores the link to the right to play, highlighting 'the need to recognise the positive value of each dimension of Article 31 in promoting the development and evolving capacities of children'.²⁵ Its relationship to the rights to life and survival is apparent. As children play, they develop physical health and abilities, as well as social skills such as abilities to problem solve, interact with others, and learn.²⁶ These abilities are inextricably linked with

²¹ Article 3 UNCRC

²² J Tobin and S Varadan, 'Article 5: The Right to Parental Direction and Guidance and Consistent with a Child's Evolving Capacities' in J Tobin (ed.) *The UN Convention on the Rights of the Child* (OUP, 2019)

²³ ComRC GC17 para.17

²⁴ Article 6 UNCRC

²⁵ ComRC GC17 para.18

²⁶ Chapter 2

survival as they increase the child's prospects for survival in the long term.²⁷

Peleg describes the Committee's engagement with the right to play as reflecting a belief that 'promoting [the right to play] is a precondition to promoting children's development'.²⁸

Article 12 of the Convention establishes the right of the child to be heard, or to express their views in 'all matters' affecting them, and for their views to be 'given due weight in accordance with the age and maturity of the child'.²⁹

The Committee argues that '[c]hildren are entitled to exercise choice and autonomy in their play', shown to be a distinct characteristic of successful play.³⁰ It highlights the need to ensure that children participate in and contribute to 'the development of legislation, policies, strategies and design of services to ensure the implementation of the rights under Article 31', as well as the need to seek feedback 'on opportunities for play... within the school and wider community'.³¹ The Committee engages with Article 31 through the lens of Article 12 in Concluding Observations,³² and links the two Articles in General Comment 7, stating: 'Planning for towns, and leisure and play facilities should take account of children's right to express their views'.³³ The two Articles are connected in General Comment 12, emphasising that children 'can contribute their perspectives' and 'should be consulted' on matters relating to play, including 'the accessibility and appropriateness of play and recreation facilities'.³⁴ The Committee

²⁷ ComRC GC17 para.18 where the Committee emphasises the need to promote awareness of 'the centrality of play for children's development'

²⁸ N Peleg, *The Child's Right to Development* (PhD Thesis, University College London, 2012). Peleg briefly notes this, despite negligible discussion on this relationship in his thesis.

²⁹ Article 12 UNCRC

³⁰ ComRC GC17 para.19. Chapter 1

³¹ *Ibid* para.19

³² ComRC, 'Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' (12 July 2016) CRC/C/GBR/CO/5; ComRC, 'Concluding Observations: Timor-Leste' (14 February 2008) CRC/C/TLS/CO/1

³³ ComRC, 'General Comment No.7: Implementing child rights in early childhood' (2006) CRC/C/GC/7/Rev.1, para.34

³⁴ ComRC, 'General Comment No.12: The right of the child to be heard' (2009) CRC/C/GC/12 (GC12), paras.128 and 115

emphasises the role play can have in facilitating Article 12 rights as a 'non-verbal form[] of communication'.³⁵

3.2. "To Engage in"

Article 31 provides children with a right 'to engage in' play. The phrase, *to engage in*, has received no analysis by the Committee or in academic literature. The phrase reflects general understandings and characteristics of play. Play is understood as being engaging, and as something children *do*. It is not a tangible 'product'. It is, rather, an activity in which children partake. You cannot 'give' a child play, nor can a child simply observing play constitute realisation of the right. Children must *engage in* play to realise the right to play.

3.3. "Appropriate to the Age of the Child"

Throughout this section, the phrase 'age' is adapted to include 'age and develop' or 'age and maturity' to reflect the text and meaning of the Convention as a whole, and in particular Article 12. Childhood is not a static period. Children's capacities, needs and interests develop and adapt throughout childhood – the needs, interests, and abilities of a newborn are very different to that of a 15-year-old. Article 31 allows for this period of change and adaptation by stating that children have a right 'to engage in play... *appropriate to the age of the child*'. This text, when read in conjunction with the Convention as a whole, clearly reflects an understanding by the drafters. It reflects what Eekelaar refers to as 'dynamic self-determinism',³⁶ and a desire by the drafters that children develop their abilities to 'their

³⁵ Ibid para.21

³⁶ J Eekelaar, 'The Interests of the Child and the Child's Wishes: The Role of Dynamic Self Determinism' [1994] 8 *IJLPF* 42

fullest potential',³⁷ to be 'fully prepared to live an individual life in society' as adults.³⁸ Regarding the right to play, there are several matters that are of importance. First, children should have increasing influence, control, and choice over the parameters of their play as they develop and age. Second, the play that children engage in is expected to alter as they develop and age.

It is vital to recognise that a principal component of play is choice.³⁹ This is not restricted to older children. The extent to which choice over the parameters of play be given due weight and consideration will necessarily adapt as children age and mature. This is in line with both Article 12 and Article 5 of the Convention.⁴⁰ Article 5 of the Convention includes a provision that provides children with a right to receive, in a manner consistent with their evolving capacities, appropriate direction and guidance in the exercise by the child of the rights in the Convention.⁴¹ Evolving capacities acknowledges that children should be given increasing freedom of choice and independence as they develop, and that there comes a point when parental direction and guidance must give way to the child's assessment of their best interests, including in the context of the right to play.⁴² Whilst play is to be child-led,⁴³ parents and the wider community have a role in providing guidance and ensuring safety, to assist in the development of skills (e.g.

³⁷ Article 29(1)(a) UNCRC

³⁸ Preamble UNCRC

³⁹ ComRC GC17 para.19 and Chapter 1 on the definition of play

⁴⁰ Section 3.1 on Article 12

⁴¹ Article 5 UNCRC; Tobin and Varadan (n22) 161 frame Article 5 as a specific right for children. They argue that evolving capacities should be seen as a guiding principle due to its relevance 'to the implementation of *all the rights* under the Convention' (162, emphasis in original). This is supported by Hanson and Lundy (n19)

⁴² ComRC, 'General Comment No.14 on the Right of the Child to Have His or Her Best Interest Taken as a Primary Consideration' (2013) CRC/C/GC/14 (GC14), para.44; Tobin and Varadan (n22) and S Varadan, 'The Principle of Evolving Capacities under the UN Convention on the Rights of the Child' [2019] 27 *IJCR* 306. The Committee refers to evolving capacities in the context of Article 31 rights in GC17 paras.14(a), 14(e), 18, 32, 33 and 57(b). On the dangers of parental overprotection, and perceptions of adolescents play, Chapters 3 and 6.

⁴³ Chapter 1

social skills) and in protecting children from harm. The right to play is not a trump right. The Committee provides guidance for the application of these rights, stating that '[t]he best interests of the child and listening to children's experiences and concerns should be mediating principles for determining the level of risk to which children can be exposed'.⁴⁴

According to the Committee, activities that may not be in the best interests of, or be particularly interesting for, a young child may be perfectly acceptable for an older child, and vice versa. This could relate to 'the amount of time afforded' for play, 'the nature of spaces and environments available' for play, or the 'forms of stimulation and diversity' offered in play.⁴⁵ This reflects the Committee's definition of play, which includes the reference to the fact that play 'forms will change and be adapted throughout the course of childhood'.⁴⁶ Nevertheless, the scope of Article 31 does not change, only the application of the right.⁴⁷ It can be concluded that the phrase 'appropriate to the age of the child' represents an acknowledgement of the evolving capacities of the child, the child's continuing development, and changing play interests.

Whilst specific forms of play for children of different ages may be situational, the Committee suggests that '[a]s children grow older their needs and wants evolve from settings that afford play opportunities to places offering opportunities to socialize, be with peers or be alone'.⁴⁸ This is a problematic statement as it indicates that older children do not engage in play, but rather

⁴⁴ ComRC GC17 para.39; G Lansdown and J Tobin, 'Article 31: The Rights to Rest, Leisure, and Play' in J Tobin *The UN Convention on the Rights of the Child: A Commentary*, (OUP, 2019) 1211 (highlighting the 'mediating rather than determinative role' of children's opinions 'in assessing the level of risk to which they should be exposed').

⁴⁵ ComRC GC17 para.14(e)

⁴⁶ Ibid para.14(c); Chapter 1 on the definition of play

⁴⁷ For example, the Committee advise that spaces available for play 'promote safe, independent mobility, as their capacities evolve' in GC17 para.34.

⁴⁸ Ibid para.14(e)

that their leisure time is spent in socializing only.⁴⁹ This undermines the Committee's other references to adolescents' play and risks furthering the perception of the right to play as relating only to young children.⁵⁰ The text of Article 31 entails that the implementation and realisation of the right may alter as the child matures, as appropriate to the age of the child.

3.4. AAAQ

Following Committee on Economic, Social and Cultural Rights' (CESCR) GC14 on the right to the highest attainable standard of health, it has become common for the content of economic and social rights to be outlined in terms of the AAAQ framework.⁵¹ This framework involves looking at the accessibility, availability, affordability and quality of a right in order outline what is considered to be the content of a right. Lansdown and Tobin argue that this framework is valuable in providing guidance on securing 'the *effective* enjoyment of a right', and suggest that the framework was 'heavily' relied upon in the drafting of GC17,⁵² although there is no explicit reference to the framework within the text of GC17. The value that this framework has had in providing more detailed understanding of the content of other economic, social and cultural rights justifies its use here. Due to its role in

⁴⁹ Ibid para.14(b), the Committee defines leisure as 'time in which play or recreation can take place. It is defined as free or unobligated time that does not involve formal education, work, home responsibilities, performance of other life-sustaining functions or engaging in activity directed from outside the individual. In other words it is largely discretionary time to be used as the child chooses'

⁵⁰ Chapter 3; Davey and Lundy (n16) 9 and 12 highlight the desire of older children to engage in play and have play opportunities.

⁵¹ The Committee on Economic, Social and Cultural Rights (CESCR) use Accessibility, Availability, Affordability and Quality (3AQ) to outline the content of the right to health in 'General Comment No.14: The Right to the Highest Attainable Standard of Health', E/C.12/2000/4 (CESCR GC14), para.12. Elements of this framework appeared previously, for example in CESCR, 'General Comment No.12: The Right to Adequate Food', E/C.12/1999/5 (CESCR GC12) and CESCR, 'General Comment No.13 The Right to Education', E/C.12/1999/10 (CESCR GC13). 'Quality' first appeared as a separate measure in CESCR GC14. CESCR GC13 referred to 'adaptability'. CESCR 'General Comment No.15: The Right to Water', E/C.12/2002/11 (CESCR GC15) did not include affordability.

⁵² Lansdown and Tobin (n44) 1211 (emphasis in original)

developing the AAAQ framework, the work of CESCR is used in this section to provide guidance on the concepts therein.

3.4.1. Availability

'Availability' refers to quantity. It requires that children have *enough* opportunities to engage in play. CESCR has expanded upon the concept of 'availability' by explicating that it requires sufficiency.⁵³ CESCR has referred to sufficiency in context of quantity and quality and defines availability as relating to possibilities 'in accordance with demand'.⁵⁴ Sufficiency is to be assessed geographically and with reference to the size of the population in each locality, and thus can be 'viewed from a supply perspective'.⁵⁵ In the context of the right to play, the question that must be asked is: are there sufficient opportunities for play for all children in a particular geographic area? It can be understood as 'an objective criterion, which can be measured through quantitative data... and represents a low level of complexity'.⁵⁶

The concept of play itself is complex and measuring availability may thus be difficult. At its most basic level, availability must refer to the space available to children to engage in play. The Committee makes multiple references to appropriate space, environments for play, and descriptions of such.⁵⁷ This is the easiest element of play to measure, as it can involve the calculation of playable spaces for children (indoor and outdoor).⁵⁸ What constitutes playable spaces relates more to the other aspects of AAAQ, although the Committee's description of the optimum environment for play provides an

⁵³ CESCR GC12 para.8, CESCR GC13 para.6(a), CESCR GC14 para.12(a), CESCR GC15 para.12(a)

⁵⁴ CESCR GC12 para.12

⁵⁵ MH Jensen et al., *The AAAQ Framework and the Right to Water*, (The Danish Institute for Human Rights, 2014) 20 expand upon this in the context of the right to water.

⁵⁶ Ibid

⁵⁷ For example: ComRC GC17 para.8, 14(e), 32, 36, 51, 58(f)

⁵⁸ Ibid para.26. The Committee refers to the need to provide public spaces for play 'especially' for children without such space 'in their own homes'.

excellent starting point for this.⁵⁹ Availability must include the provision of sufficient time available for play.⁶⁰ This is a much harder element to measure as it can be influenced by aspects such as time spent in schooling, engaging in work (domestic or otherwise), and mental space for play.⁶¹ This requires implementation of the rights to rest and leisure as they centre upon the availability of time.⁶²

The impact of adults' perceptions and attitudes towards play has been highlighted as pivotal to availability, and accessibility, of play opportunities for children. Acknowledgement of the central role of parents' perception and attitudes towards play and implementation of measures to ensure that they are supportive of the right to play is thus fundamental to the availability of the right to play. Regarding availability, the Committee refers to 'adequate resources and equipment, trained and motivated staff, and provision of dedicated budgets'.⁶³ These resources are secondary to availability of time and space as they relate more to specific forms and environments for play. Availability requires application of principles of non-discrimination. It is not sufficient to provide play opportunities for some children and not others, nor is it sufficient to neglect duties to address inequalities.

3.4.2. Accessibility

Accessibility has been defined as concerning 'the level of access, and identifies who has access'.⁶⁴ Whilst accessibility as a concept is often understood in relation to assistive measures for those with disabilities, it is

⁵⁹ Ibid para.32 outlines factors for an optimum environment for play.

⁶⁰ The Committee refers to time for play in, for example, Ibid paras.4, 14(b), 14(e), 32

⁶¹ Chapter 3; Ibid para.16 where the Committee refers to 'working children', and para.17 where it refers to 'determination of school hours'.

⁶² 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' (Ibid para.14(a)). The Committee's definition for the right to leisure can be found at n49.

⁶³ ComRC GC17 para.51

⁶⁴ Jensen (n55) 20

broader than that in this context and relates to accessibility for *all*.⁶⁵ Even an understanding of accessibility relating simply to non-discrimination could be applied to all children as children themselves are a vulnerable and underrepresented group.⁶⁶ Accessibility has been developed by CESCR to include four sub-criteria, or 'overlapping dimensions' – physical accessibility, economic accessibility, non-discrimination, and information accessibility.⁶⁷

Physical accessibility is described as referring to something as being 'within physical reach and without physical threats'.⁶⁸ CESCR emphasises that physical accessibility requires safety and sufficiency for the acquisition and practice of the right,⁶⁹ and that the right is within 'physical reach for all sections of the population, especially vulnerable or marginalized groups... including in rural areas'.⁷⁰ In the context of the right to play, this requires that playable spaces are within physical access for children, that they are safe for their play, and that they are of sufficient quality and quantity. In line with Article 2 CRC, play spaces must be inclusive and physically accessible for children with disabilities.⁷¹ Chapter 3 discussed particular groups of children who may be considered 'especially vulnerable' in the realisation of the right to play. The Committee places great emphasis on play

⁶⁵ Lansdown and Tobin (n44) 1212 apply accessibility narrowly, referring to it as a concept that 'provides children with *protection against discrimination*'. CESCR refer to accessibility for everyone in, *inter alia*, GC12 para.13, GC13 para.6(b), GC14 para.12(b), GC15 para.12(c).

⁶⁶ A Nolan, *Children's Socio-Economic Rights, Democracy and the Courts* (Hart, 2011) 16 (Nolan refers to children as 'differently vulnerable'); J Herring, 'Vulnerability, Children and the Law' in M Freeman (ed.) *Law and Childhood Studies: Current Legal Issues* (OUP, 2012)

⁶⁷ CESCR GC13 para. 6(b) included just three 'overlapping dimensions' (information accessibility is not included). CESCR GC14 para.12(b) and CESCR GC15 para.12(c), *inter alia*, include the four dimensions.

⁶⁸ Jensen (n55) 20

⁶⁹ Safety is referred to in CESCR GC13 para.6(b)(ii), CESCR GC14 para.12(b)(ii) and CESCR GC15 para.12(c)(i). Sufficiency is referred to in CESCR GC15 para.12(c)(i).

⁷⁰ CESCR GC14 para.12(b)(ii)

⁷¹ ComRC GC17 paras.24, 34, 50, 57(a), 58(d), 58(e), and 58(f); Article 23 UNCRC and Article 30 CRPD

spaces being appropriately safe and provides guidance to this effect within GC17 that states should consider when implementing the right to play.⁷²

Economic accessibility is concerned with 'the cost of [access] and attention is given to whether the cost... threatens the realisation of other rights'.⁷³ It has been discussed in relation to affordability, and affordability 'for all'.⁷⁴ Poverty can pose a threat to accessibility of the right to play when a cost is associated with access to spaces or opportunities. The Committee emphasises the importance of ensuring equal access and opportunities for play for children living in poverty.⁷⁵ Affordability includes issues relating to transport and relates to matters of availability. If appropriate play space and opportunities are clustered in specific locations, this would place a transportation cost for children outside those areas.⁷⁶ This may be seen as an indirect cost, which CESCR emphasises must be taken into consideration under economic accessibility, alongside direct costs.⁷⁷

Non-discrimination is both 'a specific element of accessibility as well as an overarching human rights principle for all AAAQ criteria'.⁷⁸ It requires 'an in-depth analysis of marginalised [and vulnerable] groups, and equal access'.⁷⁹ It requires that access is given to all 'in law and in fact, without discrimination'.⁸⁰ This principle requires that states examine and ensure

⁷² GC17 paras.32 and 34; Chapter 3, on safe space.

⁷³ Jensen (n55) 20

⁷⁴ CESCR GC14 para.12(b)(iii), CESCR GC13 para.6(b)(iii), CESCR GC15 para.12(c)(ii)

⁷⁵ ComRC GC17 para.49. CESCR specify that 'poorer households should not be disproportionately burdened' in the cost of the realisation of their rights' (CESCR GC14 para.12(b)(iii)), and note that economic accessibility relates to both personal and household finances (CESCR GC12 para.13).

⁷⁶ Chapter 3 on poverty and play, including transport.

⁷⁷ CESCR GC15 para.12(c)(ii)

⁷⁸ Jensen (n55) 20

⁷⁹ Ibid

⁸⁰ CESCR GC14 para. 12(b)(i)

accessibility to the right to play for the most vulnerable and marginalised children.⁸¹

Information accessibility is understood broadly. It relates to the provision of general information on the right, on 'how and when rights holders can participate in policy and decision-making processes' regarding their rights, and the 'establishment of mechanisms for feedback and complaints'.⁸² CESCR explains that it 'includes the right to seek, receive and impart information'.⁸³ Lansdown and Tobin refer to this factor in a much narrower sense as relating only to information 'regarding available activities'.⁸⁴ However, the Committee addresses the issue of information accessibility broadly, requiring that children are given access to information relating to their Article 31 rights,⁸⁵ that they are given information necessary to ensure to their safety.⁸⁶ It requires that mechanisms are established for children to complain and seek redress regarding their right to play,⁸⁷ and that the right to play is implemented in consultation and collaboration with children.⁸⁸ As with availability of play, a nuanced approach is required in relation to all elements of accessibility.

3.4.3. Acceptability

Acceptability 'concerns subjective assessment of the right holders' perceptions' of their experience of their rights.⁸⁹ CESCR explains that acceptability requires the implementation of the right to be 'culturally

⁸¹ On non-discrimination, Section 2, Section 3.1, Section 4.2.1.2, Section 4.2.1.3, and Chapter 3 on challenges relating to the right to play.

⁸² Jensen (n55) 21

⁸³ CESCR GC14 para.12(b)(iv), CESCR GC15 para.12(c)(iv)

⁸⁴ Lansdown and Tobin (n44) 1212

⁸⁵ ComRC GC17 para.22

⁸⁶ Safety online, Ibid para.57(d)

⁸⁷ Ibid para.57(g)

⁸⁸ Ibid paras.19 and 58, the latter requires this for the fulfilment of the right to play.

⁸⁹ Jensen (n55) 21

appropriate i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements',⁹⁰ and that it is 'relevant'.⁹¹ It requires that the state 'take[s] into account, as far as possible, perceived values' on the right and its implementation.⁹² In the context of the right to play, the application of this concept must be nuanced as children's interests, needs and abilities vary over time and space, and play is individual in nature. Acceptability is temporally subjective. Cultural acceptability in the context of the right to play requires that children's play is deemed acceptable by their community, parents and guardians 'in light of considerations such as the child's age, gender, ability, and religious and cultural background'.⁹³ However, cultural considerations are not acceptable if they result in children being denied their right to play, or being placed at unacceptable risk of harm.⁹⁴ The state is obliged to 'invest in measures to challenge widespread cultural attitudes which attach low value' to the right to play, or restrict access to play for certain groups including, adolescents.⁹⁵

3.4.4. Quality

There is little guidance given by CESCR on what is to be understood as 'quality' in general terms.⁹⁶ Lansdown and Tobin refer to the principle of quality as requiring that 'the *activities* made available to children are of an appropriate standard to ensure that children's experiences are enjoyable and pose no threat'.⁹⁷ In fact, it must go further than this to ensure that the time and space, mental and physical, afforded for play are adequate and of

⁹⁰ CESCR GC14 para.12(c)

⁹¹ CESCR GC13 para.6(c)

⁹² CESCR GC12 para.11

⁹³ Lansdown and Tobin (n44) 1212

⁹⁴ ComRC GC17 paras. 34-36, 39 and Article 19 UNCRC

⁹⁵ ComRC GC17 paras.56(b) and 37; Chapter 3

⁹⁶ CESCR provide guidance on 'quality' in the context of, for example, food and water but they do not provide a general definition or guidance on how to apply the term more broadly.

⁹⁷ Lansdown and Tobin (n44) 1212 (emphasis added)

sufficient quality. The Committee's guidance relating to '[f]actors for an optimum environment' is of value here, as it provides an outline of conditions that are deemed necessary for the full enjoyment and realisation of the right to play.⁹⁸ For play to be understood as of good quality it must reflect the characteristics associated with play, some of which are referred to in the Committee's definition of play – 'fun, uncertainty, challenge, flexibility and non-productivity'.⁹⁹ Children views, as well as those of experts, are to be included in any understanding of 'technical expertise'¹⁰⁰ used for the interpretation of quality pertaining to the right to play.

4. Obligations Relating to the Right to Play

Article 4 of the Convention serves as the principal general obligation provision of the Convention. It reads as follows:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and where needed within the framework of international cooperation.

The wording of Article 4 reflects the drafters 'deliberate attempt to adapt and fuse' Articles 2 of the ICCPR and ICESCR 'in a way that did not lead to a diminution in the protection offered under these instruments'.¹⁰¹ Discussion of the formulation of Article 4 has centred around the textual absence but subsequent use of the terms 'progressive realisation',

⁹⁸ ComRC GC17 para.32

⁹⁹ Ibid para.14(c); On the characteristics of play, Chapter 1

¹⁰⁰ Jensen (n55) 21

¹⁰¹ J Tobin, 'Article 4: A State's General Obligation of Implementation' in J Tobin (ed.) *The UN Convention on the Rights of the Child: A Commentary* (OUP, 2019) 109

'international assistance' and 'to take steps';¹⁰² the Committee's historically uncritical over-reliance on the work of CESCR;¹⁰³ and the Committee's failure to develop a 'coherent, comprehensive child rights-specific ESR framework'.¹⁰⁴

Nolan argues that children hold a unique position in accessing and experiencing their ESR and violations of such, arguing that children are 'differently vulnerable' in their experiences of ESR.¹⁰⁵ The child's unique position entails that 'the content, interpretation and application of their rights' must differ from adults and thus requires a fuller examination.¹⁰⁶ More recent research shows that the Committee has taken steps to address this, particularly post-early 2013.¹⁰⁷ Nolan and Tobin acknowledge that General Comment 19 reflects an intention on the part of the Committee to address the child-rights specific implementation of ESRs.¹⁰⁸ Tobin praises the Committee's 'harmonization' of the obligations under the CRC and ICESCR, arguing that 'it is consistent with the principle of external system coherence and is thus justifiable'.¹⁰⁹ Nolan remains cautious about the Committee's continuing 'heavy reliance' on CESCR.¹¹⁰

¹⁰² Nolan (n4), A Nolan, 'Children's Economic and Social Rights', in T Liefwaard and U Kilkelly (eds.) *International Human Rights of Children* (Springer, 2019); Ibid 109 argues that the travaux préparatoires of the Convention suggests that differences between these texts were not intended to have substantive consequence, and that the 'general thrust' of the Article is the same as its counterparts; ComRC, 'General Comment No.19 on public budgeting for the realisation of children's rights' (2016) CRC/C/GC/19 (GC19), para.29

¹⁰³ Nolan (n4) 255, 263

¹⁰⁴ Nolan (n4) 249 (emphasis omitted).

¹⁰⁵ Nolan (n66) 16; Nolan (n102) 4-5 and Nolan (n4) 250-252

¹⁰⁶ Nolan (n4) 250

¹⁰⁷ February 2013 saw the introduction of ComRC, 'General Comment No.15 on the right of the child to the enjoyment of the highest attainable standard of health', (2013) CRC/C/GC/15 (GC15) and ComRC GC17. Nolan (n4) refers to ComRC GC15 as being of particular impact in this regard as it discussed an undisputable and widely accepted ESR. Less is made of GC17, reflecting its status as forgotten and neglected, as well as the confusion around its status as an ESCR or CPR.

¹⁰⁸ Nolan (n102) and Tobin (n101). ComRC GC19 on public budgeting for the realisation of children's rights addresses Article 4 explicitly.

¹⁰⁹ Tobin (n101) 132

¹¹⁰ Nolan (n102) 6

Applying Article 4 to the Convention requires acknowledgement of the overarching and complementary position of the provision: 'it is not intended to be read in isolation from the individual rights to which it applies'.¹¹¹ In the context of Article 31, this means that the general obligations in Article 4 are to be read alongside the obligation to 'recognise' stipulated in Article 31. Article 4 must be read in conjunction with general principles of the CRC and implemented in a manner coherent with the object and purpose of the Convention as a whole. Implementation of the Convention includes a requirement to apply Article 4 in line with Article 18 of the Convention, a provision that 'makes clear the location of children within families and the role of parents and others with legal responsibility for children in relation to satisfying their ESR'.¹¹² The nature of State party obligations under the Convention is complicated and states will benefit from guidance from the Committee and others.

With regard to ESC rights, Article 4 is widely understood to include five elements: an obligation to undertake *all appropriate measures*; to undertake these *to the maximum extent of available resources*; to *progressively realise* the rights under the Convention; to meet minimum core requirements of the Convention rights; the principle of *non-retrogression*; and to engage with a framework of *international cooperation*. It is not clear which rights under the Convention should be defined as economic, social and cultural rights as 'there is no simple or authoritative division of human rights in general or of Convention rights'.¹¹³ The Committee notes that some Articles under the Convention hold both civil and political, and economic, social and cultural elements, 'thus reflecting the interdependence and indivisibility of all human

¹¹¹ Tobin (n101) 109

¹¹² Nolan (n102) 3

¹¹³ ComRC, 'General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child', (2003) CRC/GC/2003/5 (GC5) para.6

rights'.¹¹⁴ Some commentators have suggested that a delineation of rights could be possible by drawing on the ICCPR and ICESCR.¹¹⁵ This is problematic when dealing with the CRC as some rights including the right to play are unique to the Convention and are 'considerably more child-specific in nature' than those included in ICCPR and ICESCR.¹¹⁶ Efforts have been made to clarify this, with the right to play being understood as an economic, social and cultural right, evidenced in the way in which the Committee describes the obligations pertaining to the right to play in GC17.¹¹⁷ There is a growing literature on State party obligations under children's economic, social and cultural rights. This section seeks to acknowledge that literature whilst focusing on the right to play.

4.1. "To Undertake"

The wording of Article 4 UNCRC differs slightly to that of Article 2 ICESCR by placing an obligation to *undertake* measures. Article 2 ICESCR refers instead to an obligation to '*undertake to take steps*'. The Committee has explained that this difference in terminology is not to affect the understanding of the duty.¹¹⁸ CESCR clarifies that states may be in violation of their obligations if they fail to take steps (acts of omission) as well as through direct acts (acts of commission).¹¹⁹ The obligation to take steps is immediate in nature and is 'not dependent on resources'.¹²⁰ CESCR describes this immediate duty to take steps as in line with the '*raison d'être* of the Covenant, which is to

¹¹⁴ Ibid

¹¹⁵ Tobin (n101) 130; Nolan (n4) 253 (A list of ESRs are provided 'based on a consideration of those rights (and elements of rights) in the CRC that are reflected in ICESCR'. This list does not include Article 31, although Article 31 is referred to within Nolan's paper); Nolan (n102)

¹¹⁶ Nolan (n102) 3

¹¹⁷ ComRC GC17; On the right to play as an ESCR, NR Lott, 'The Right to Play as an Economic, a Social and a Cultural Right' (Working Paper).

¹¹⁸ For example: ComRC GC19 paras.18-21, 28-34, 43; ComRC GC17 para.54(b); ComRC GC5; ComRC 'Day of General Discussion on "Resources for the Rights of the Child – Responsibility of States"' (2007) (DGD 2007)

¹¹⁹ CESCR GC13 para.58

¹²⁰ Tobin (n101) 142; OHCHR, *Fact Sheet No.33: Frequently Asked Questions on Economic, Social and Cultural Rights* (United Nations) 16, CESCR 'General Comment No.3: The Nature of States Parties' Obligations' E/1991/23 (CESCR GC3) para.2; Nolan (n102) 9

establish clear obligations for States parties in respect to the full realisation of the rights in question'.¹²¹ The Committee adopts a similar approach stating that the phrase 'shall undertake' entails that States parties 'have no discretion as to whether or not to satisfy their obligation'.¹²² CESCR has further outlined that the duty to take steps requires that steps be 'deliberate, concrete and targeted',¹²³ reflecting the points relating to the effectiveness of measures chosen by states. This obligation is of great importance to the understanding of progressive realisation, addressed below. There is no specific expansion of the meaning of this phrase under GC17 in relation to the right to play.

4.2. "All Appropriate Measures"

The wording of Article 4 of the Convention makes clear that states are obliged to take legislative and administrative measures for the implementation of all rights under the Convention. Whilst legislative incorporation of the Convention is not sufficient to result in the realisation of ESCRs,¹²⁴ the Committee has highlighted the importance of incorporation. Ensuring that the Convention is directly applicable and enforceable domestically, and ensuring the compatibility of all domestic legislation with the Convention, is described by the Committee as 'fundamental'.¹²⁵ Lundy et al., argue that states that have incorporated the Convention are associated with greater degrees of implementation.¹²⁶ Kilkelly claims that incorporation is 'an important indicator of the political and social status of

¹²¹ CESCR GC3 para.9

¹²² ComRC GC19 para.18

¹²³ CESCR GC3 para. 2 and CESCR GC13 para.43

¹²⁴ P Alston and G Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' [1987] 9 *HRQ* 156, 167-72

¹²⁵ ComRC GC5 paras.1 and 20; DGD 2007 para.23; CESCR GC3 para.3; CESCR 'General Comment No.9: The Domestic Application of the Covenant' E/C.12/1998/24 paras.4-5 and 8

¹²⁶ L Lundy et al., 'Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review' [2013] 21 *IJCR* 442, 444

children' in a particular society.¹²⁷ Others suggest that incorporation empowers children as rights holders'.¹²⁸

Some Articles within the Convention stipulate additional measures for states to undertake to fulfil their obligations (Articles 19, 32 and 33 refer to 'legislative, administrative, social and educational measures').¹²⁹ Article 31 does not stipulate what measures are required to realise the rights therein.¹³⁰ A clear understanding of the meaning of the text in Article 4 is important.

The inclusion of 'all appropriate... other measures' in the text of Article 4 was a deliberate decision to ensure that the stipulation of measures was non-exhaustive.¹³¹ Some suggest that the language of 'appropriate' measures may prove 'a convenient rationale' for states seeking to 'ignore or give only pro forma effect' to certain rights.¹³² Understanding of the concept has developed to reduce such opportunity. Article 4 is understood to include a requirement for a comprehensive and effective legislative system for the realisation of Convention rights; the development of a comprehensive and supported national strategy; coordinated efforts to realise children's rights across government departments; responsibilities to protect children's rights from private actors, and to mobilise the private sector to further the realisation of children's rights; to engage with civil society (and children); to effectively monitor the implementation of children's rights; and to raise

¹²⁷ U Kil Kelly, 'The CRC at 21: assessing the legal impact' [2011] 62 *NIJLQ* 143, 147

¹²⁸ S Hoffman and R Thornburn Stern, 'Incorporation of the UN Convention on the Rights of the Child in National Law' [2020] 28 *IJCR* 133, 143

¹²⁹ Articles 19 and 32 UNCRC limit State obligations to these broad areas. Article 33 UNCRC states 'all appropriate measures *including...*' (emphasis added)

¹³⁰ This shows an 'uneven' approach to the text of the Convention, highlighted by Alston and Quinn (n124) 165 in relation to the text of ICESCR.

¹³¹ Tobin (n101) 114

¹³² AG Mower, *The Convention on the Rights of the Child: International Law Support for Children* (Greenwood Press, 1997) 25

awareness and capacity-build for the full realisation of Convention rights.¹³³ The open-ended phraseology of Article 4 requires that no limit be placed on the understanding of the scope of the obligation. CESCR does not intend or see it as possible to 'prescribe in detail the measures which each or every State party will find appropriate to ensure effective implementation of the Convention'.¹³⁴

For Tobin, the content of 'all appropriate measures' can be understood as being based upon two principles. First, a principle of discretion. This principle stems from the work of CESCR in GC3, which has been referred to by the Committee as 'complementary' to their work.¹³⁵ Tobin explains that on the matter of implementation 'states enjoy a level of discretion in deciding which measures will be appropriate within their jurisdiction'.¹³⁶ Nevertheless, states bear a heavy burden of justification with a requirement to demonstrate 'not only the measures that have been taken but also the basis on which they are considered to be appropriate under the circumstances'.¹³⁷ This principle is subject to a requirement of effectiveness, proven through demonstration of outcomes.¹³⁸ Lansdown and Tobin describe the principle of effectiveness in relation to Article 31 rights as an 'overriding caveat',¹³⁹ and the Committee emphasises it throughout GC17.¹⁴⁰ This leads to the second principle: the principle of ultimate determination. This rests upon the notion that the Committee has ultimate responsibility to determine whether all appropriate measures have been taken.¹⁴¹

¹³³ Tobin (n101) 114-129

¹³⁴ CESCR GC3 para.26

¹³⁵ ComRC GC5 para.6

¹³⁶ Tobin (n101) 112

¹³⁷ CESCR GC3 para.4

¹³⁸ ComRC GC19 para.24

¹³⁹ Lansdown and Tobin (n44) 1216-1217

¹⁴⁰ ComRC GC17 paras.57(b), 57(g), 58(h)

¹⁴¹ CESCR GC3 para.4 where CESCR describes itself as having 'ultimate determination as to whether all appropriate measures have been taken' in relation to Covenant rights.

The text of Article 31 includes only a single obligation; the obligation to *recognise* the rights therein.¹⁴² Whilst this may seem limited in nature, it is clear from the relevant academic literature that the obligation to recognise a right 'does not mean the absence of any real state obligations' but rather 'triggers the application of general state obligations'.¹⁴³ This means that the general implementation obligations under Article 4 are applicable to the right to play. Lansdown and Tobin claim the connection of Article 31 to Article 4 deems the obligation to *recognise* to require 'states to take reasonable measures to respect, protect and fulfil the rights'.¹⁴⁴

Considering the right to play, the Committee provided 'an extremely extensive list of measures to be adopted by states'.¹⁴⁵ This list is based upon the framework of the tripartite typology. States parties are called on to create 'the *context* for the realisation of Article 31', described as 'an optimum environment'.¹⁴⁶ GC17 discusses this, and other issues such as challenges that must be overcome to realise Article 31 rights, separately from the list of 'obligations'. Nevertheless, these sections deal with measures that may form elements of obligations, such as those relating to specific groups of children. For example, the paragraph on children in situations of conflict refers to providing settings for play in conflict areas, whilst the section on overly structured and programmed schedules states that '[c]hildren are entitled to time that is not determined or controlled by adults', and the section on optimum environment describes opportunities that are to be

¹⁴² Article 31(1) UNCRC reads: *States Parties recognise 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.*

¹⁴³ Alston and Quinn (n124)185

¹⁴⁴ Lansdown and Tobin (n44) 1214-1215. They suggest (1215) that these measures reflect State 'obligations' as they clarify what measures the Committee deems to be '*appropriate*' in line with Article 4 obligations (original emphasis).

¹⁴⁵ Ibid 1216; ComRC GC17 paras.56-58

¹⁴⁶ ComRC GC17 para.32 (emphasis added)

provided for children.¹⁴⁷ This separation of topics, from a specific obligations section and discussion of obligations and measures elsewhere in GC17, may lead to some confusion over what is required of states as they seek to undertake all appropriate measures to realize the right to play, and in particular risks States parties not fully acknowledging these other areas and the measures recommended therein.

4.2.1. The Tripartite Typology

The implementation of human rights treaties has widely involved use of a 'tripartite typology' including three 'types or levels of obligations' to understand and categorise State party obligations.¹⁴⁸ The tripartite typology has become the key framework for understanding States parties obligations to human rights treaties.¹⁴⁹ The tripartite typology was developed, based on the work of Shue and Eide, in response to the 'damaging' negative/positive dichotomy that stemmed from the 'traditional' division between ESCRs and civil and political rights.¹⁵⁰ Koch describes the tripartite typology as 'generally considered an adequate substitution' to the traditional negative/positive dichotomy, noting that it has acted as a 'bridge-builder' between the two sets of rights, contributing to an understanding of the two sets of rights as encompassing a spectrum of legal obligations.¹⁵¹ The placement of the Committee's discussion on the tripartite typology in GC19 suggests that the Committee regards it as 'applying to all rights'.¹⁵² Shue developed a typology that described State party obligations as including duties 'to avoid depriving', 'to protect from deprivation' and 'to aid the

¹⁴⁷ Ibid paras.53, 42 and 32

¹⁴⁸ CESCR GC13 para.46

¹⁴⁹ F Mégret, 'Nature of Obligations', in D Moeckli, S Shah and S Sivakumaran (eds) *International Human Rights Law*, (OUP, 2010) 130

¹⁵⁰ IE Koch, 'Dichotomies, Trichotomies or Waves of Duties?' [2005] 5 *HRLR* 81, 82

¹⁵¹ Ibid. Koch notes that the notion of a spectrum itself is not unproblematic (92)

¹⁵² Nolan (n102) 12

deprived', suggesting that these were more appropriate distinctions to be made than distinctions between rights.¹⁵³ The echoes of these distinctions are evident in contemporary variants of the tripartite typology. Eide coined the typology as including obligations to *respect*, *protect* and *fulfil* in his *Report on the Right to Adequate Food as a Human Right* to the Commission on Human Rights in his role as a UN Special Rapporteur, describing the typology as relating to the implementation of all human rights.¹⁵⁴

Koch comments on the use of the typology by CESCR, describing it as 'inconsistent' with its use deviating 'from the original perception of the various elements' of the typology, resulting in levels of the typology seemingly 'difficult to distinguish from one another'.¹⁵⁵ One reason for this inconsistent use of the typology stems from the fact that the levels 'overlap'.¹⁵⁶ Koch praises CESCR for 'a tremendous job in explaining the obligations of States parties', but notes that it is difficult 'to fit a certain obligatory measure into the tripartite typology' with some belonging 'in more than one category'.¹⁵⁷ She argues that 'the distinction between the categories is blurred', and that there is an indication within CESCR's General Comments (GCs) 'that more levels are required'.¹⁵⁸ Supporters of the typology suggest that it is necessary to counter the traditional 'laissez-faire' approach to the application of international law, arguing that such an approach is not appropriate for international human rights law.¹⁵⁹ The tripartite typology is thus viewed as a more robust system of application as

¹⁵³ H Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (2nd ed., PUP, 1996) 52

¹⁵⁴ Economic and Social Council, 'Report on the right to adequate food as a human right submitted by Mr. Asbjørn Eide, Special Rapporteur' (7 July 1987) E/CN.4/Sub.2/1987/23 para.66. Shue (Ibid) refers to 'protect' and 'fulfil', alongside an obligation to 'avoid' rather than 'respect'.

¹⁵⁵ Koch (n150) 88. CESCR first adopted the tripartite typology in its GC12. The obligation to protect predates this through its use in regional courts. Nolan (n102) 252

¹⁵⁶ Koch (n150) 92, 89-92.

¹⁵⁷ Ibid 91

¹⁵⁸ Ibid

¹⁵⁹ Mégret (n149) 130

its 'entirely new vocabulary of obligations' offers this.¹⁶⁰ Koch suggests that its value and 'applicability as an analytical tool' is weakened by the instance of its use alongside an acceptance of it as 'a blurred picture'.¹⁶¹ It is against this backdrop that the Committee embraced the tripartite typology. Its decision to use the typology to frame the obligations of states and offer normative content on the right to play is therefore not unproblematic. The Committee's application of the typology in GC17 blurs the distinction between the typology levels, demonstrates poor understanding of the typology, and diminishes its value.

4.2.1.1. Respect

The first element of this typology is 'respect'. This is an immediate and primarily negative obligation on States parties in that it requires that they do not take any measures that may violate¹⁶² or 'interfere with the enjoyment' of rights,¹⁶³ directly or indirectly.¹⁶⁴ It is traditionally understood as closest to the notion of negative obligations but, as Koch demonstrates, this distinction is not as clear as first presumed.¹⁶⁵ Whilst CESCR describes the obligation as requiring states 'to *avoid* measures that hinder or prevent the enjoyment of the right',¹⁶⁶ the application of the obligation to respect under GC17 blurs this guidance and demonstrates a misunderstanding of the obligation to respect.

The Committee specifies that the obligation to respect the right to play requires states to 'refrain from interfering, directly or indirectly, in the

¹⁶⁰ Ibid

¹⁶¹ Koch (n150) 93

¹⁶² Mégret (n149) 130

¹⁶³ Nolan (n4) 257-8

¹⁶⁴ ComRC GC19 para.27(a), ComRC GC17 para.54(a)

¹⁶⁵ Koch (n150)

¹⁶⁶ CESCR GC13 para.47 (emphasis added)

enjoyment of the rights provided for in Article 31'.¹⁶⁷ Additional to these traditionally negative obligations, the Committee states that the obligation to respect the right to play involves 'the *adoption* of specific measures aimed at achieving respect for the right of every child, individually or in association with others, to realise his or her rights under Article 31'.¹⁶⁸ This changes the application of the obligation to respect from one of restraint to one of action.¹⁶⁹

GC17 outlines two elements to the obligation to respect; an obligation to support caregivers and an obligation to raise awareness. The former is described as relating to states' obligations under Article 18 of the CRC and focuses largely on the ways in which parents and caregivers must be supported in their role and responsibility as primary carers for their children.¹⁷⁰ The Committee recommends that parents are given guidance on the importance and developmental value of play, as well as guidance on how best to facilitate the right, for example on 'how to listen to children while playing' or how to 'create environments that facilitate children's play'.¹⁷¹ The Committee states that this should include raising parents' 'awareness and understanding of the centrality of play for children's development'.¹⁷² They are required to recognise both 'the value and legitimacy' of the right to play.¹⁷³ The Committee refers to parents' role in overseeing the safety of children in their play¹⁷⁴ and in assisting children with online safety.¹⁷⁵ This has an important link to Articles 18 and 5 UNCRC and acknowledges the

¹⁶⁷ ComRC GC17 p.17, para.54(a)

¹⁶⁸ Ibid para.56 (emphasis added)

¹⁶⁹ OHCHR (n120) 11 describes the obligation to respect as one of refraint

¹⁷⁰ ComRC GC17 para.56(a) reads 'Guidance, support and facilitation with regard to the rights under Article 31 should be provided to parents and caregivers *in line with Article 18*' (emphasis added)

¹⁷¹ Ibid

¹⁷² Ibid para.18 and 56(a) and (b)

¹⁷³ Ibid para.32

¹⁷⁴ Ibid para.34

¹⁷⁵ Ibid para.57(d)

significant influence of parents on enjoyment of the right to play through their impact on activities children take part in, and the freedom and time they are given for play, on a day-to-day basis¹⁷⁶ Through providing appropriate guidance and support for parents it is expected that children will have greater enjoyment/realisation of their right to play.

The obligation of 'awareness-raising' requires states to challenge any cultural attitudes which may 'attach low value' to the right to play, and to highlight the 'significance of play... for both boys and girls of all ages'.¹⁷⁷ It requires states to 'invest in measures' that 'challenge the pervasive negative attitudes' towards children, including adolescents, that 'lead to restrictions on the opportunities for the enjoyment of' their right to play.¹⁷⁸ This guidance relates to the parents' role, namely in providing a broader context for the enjoyment of the right and in providing a context that supports parents as they assist children to realise this right. It also reflects the transformational potential of the right to play, with a clear expectation that societal attitudes that oppose and challenge the realisation of the right will be transformed. This is a much broader description of the obligation to respect than generally understood and that developed by CESCR.

4.2.1.2. Protect

The second obligation within the typology is to 'protect'. This obligation requires States parties 'to proactively ensure that persons within their jurisdiction do not suffer from human rights violations at the hand of third parties' and sees States parties 'creating an environment in which rights are

¹⁷⁶ Chapter 3, Section 2 and Ibid paras.33, 47 and 48 on ways in which parents may hinder the realisation of the right.

¹⁷⁷ Ibid para.56(a)

¹⁷⁸ Ibid para.56(b)

enjoyed'.¹⁷⁹ It is an obligation of prevention, and is described as such by both the Committee and CESCR.¹⁸⁰ This does not necessarily require a micro-management of actions by third parties, but rather entails a liability for 'failures that can be traced to [the state's] shortcomings in protecting individuals'.¹⁸¹ The Committee has described the obligation to protect as requiring states 'to regulate the role of third parties, set up complaints mechanism and systematically intervene in cases of infringement by them'.¹⁸²

Regarding the right to play, the Committee describes the state's obligation to protect as including seven distinct measures encompassing non-discrimination, regulation of non-state actors, protection of children from harm, online safety, post-conflict safety, marketing and media, and complaint mechanisms. The Committee describes the implementation of the obligation of non-discrimination as requiring legislation that guarantees access 'to all recreational, cultural and artistic environments' to all children 'without discrimination on any ground'.¹⁸³ GC17 includes 'regulation of non-state actors' under the obligation to protect, stating that 'legislation, regulations and guidelines should be introduced' to ensure compliance of non-state actors with Article 31, as well as the allocation of budgets and establishment of mechanisms for monitoring and enforcement.¹⁸⁴ Notably, regarding the right to play, the Committee requires 'employment protection for all children', with limitations on the 'hours and days of work' which in theory would enable children to find time and energy to play.¹⁸⁵ It requests

¹⁷⁹ Mégret (n149) 131

¹⁸⁰ ComRC GC19 para.27(b) and CESCR GC13 para.47; Nolan (n4) 257-8 and OHCHR (n120) 11 where the obligation to protect is described using the term 'prevent'.

¹⁸¹ Mégret (n149) 131

¹⁸² ComRC GC19 para.27(b)

¹⁸³ ComRC GC17 para.57(a). Here the Committee provides a list including parks, playgrounds, natural spaces and museums.

¹⁸⁴ Ibid para.57(b)

¹⁸⁵ Ibid

that 'play and recreational facilities', including 'toys and games equipment' have established 'safety and accessibility standards',¹⁸⁶ and states that the obligation to protect includes a requirement that Article 31 must be protected in 'urban and rural development' planning.¹⁸⁷

A distinctly protectionist view of children's rights is reflected in some of the measures outlined under the obligation to protect in GC17. One example is the requirement to introduce 'regulations prohibiting the production of realistic war games and toys for children'.¹⁸⁸ This sits alongside a general requirement of states to protect 'children from harm', calling for 'policies, procedure, professional ethics, codes and standards' to be introduced and enforced.¹⁸⁹ This includes a requirement to recognise a 'need to protect children from potential harm that may be imposed by other children' as they exercise their Article 31 rights.¹⁹⁰ Similarly, whilst the Committee recommends that measures are introduced to 'promote online access and accessibility', it focuses heavily on issues of online safety.¹⁹¹ It recommends that children are informed and empowered in their use of online media, but in the context of acting safely and responsibly online, alongside a list of measures to reduce potential harms from others at the outset.¹⁹² The Committee requires states to '[r]eview policies concerning the commercialization of toys and games to children... with particular regard to those promoting violence, girls or boys in a sexual way and reinforcing gender and disability stereotypes', as well as a general reduction in children's

¹⁸⁶ Ibid

¹⁸⁷ Ibid

¹⁸⁸ Ibid

¹⁸⁹ Ibid para.57(c)

¹⁹⁰ Ibid. This issue has not been addressed within this thesis due to space but is an area that requires further research to better understand the requirements to balance risk and harm under the right to play.

¹⁹¹ Ibid para.57(d)

¹⁹² Ibid

'exposure to advertising'.¹⁹³ These recommendations imply a reading of the obligation to protect in this context to be understood less as an obligation to protect the right to play but rather as an obligation to protect children as they play. Harms to children may adversely affect their ability to engage in and enjoy their right to play.¹⁹⁴

The Committee includes a requirement under the obligation to protect to undertake 'active measures' in order 'to restore and protect the rights (sic) under Article 31 in post-conflict and disaster situations'.¹⁹⁵ This includes measures to encourage play in order 'to promote resilience and psychological healing', to create and restore 'safe spaces' for children to participate in play 'as part of the normalization of their lives', and to remove landmines and cluster-bombs from affected areas.¹⁹⁶ The former places heavy emphasis on the benefits and importance of play for children, and particularly in the context of post-conflict and trauma.¹⁹⁷ The Committee obliges states to develop '[i]ndependent, effective, safe and accessible mechanisms... for children to make complaints and seek redress'.¹⁹⁸ This includes dissemination to children of the availability and process of such action, and an encouragement for states to ratify OP3.¹⁹⁹ The satisfaction of these requirements will require specific targeted action by states, including those that require resources.²⁰⁰

¹⁹³ Ibid para.57(f)

¹⁹⁴ Chapter 3

¹⁹⁵ ComRC GC17 para.57(e)

¹⁹⁶ Ibid

¹⁹⁷ Chapter 3 Section 4 on the challenges facing the realisation of the right to play in conflict/disaster contexts and Chapter 2 Section 4 on the importance of play for the emotional development and regulation of the child

¹⁹⁸ ComRC GC17 para.57(g). For more general discussion on whether children have a right to access to justice under the Convention, including that of redress, T Liefwaard, 'Access to Justice for Children: Towards a Specific Research and Implementation Agenda' [2019] 27 *IJCR* 195

¹⁹⁹ ComRC GC17 para.57(g)

²⁰⁰ It is generally accepted that the historic distinction of negative and positive rights under human rights law does not hold as actioning negative obligations will still require at least some resources.

4.2.1.3. Fulfil

The final obligation placed on States parties in terms of the tripartite typology is the obligation to fulfil. It is broadly understood to involve the adoption of 'appropriate measures towards the full realisation of the right'.²⁰¹ It is expected to be more progressive in nature than the obligations to respect and protect, and accounts for resource availability. What is to be understood by this obligation is not always clear. The obligation to fulfil has been described as composed of sub-elements including obligations to facilitate, provide and promote.²⁰²

The Committee provides some normative content to what is expected under the obligation to fulfil in GC19, defining it as involving facilitation, provision and promotion. It includes a requirement that states '[f]acilitate children's rights by taking measures that enable and assist children to enjoy their rights'.²⁰³ The Committee regards this as involving 'putting in place measures to increase knowledge and understating of the Convention and its optional protocols within state functions, and fostering a culture that respects, protects and fulfils children's rights'.²⁰⁴ This is so despite the fact that 'measures to increase knowledge and understanding of the Convention' suggests a closer link to a semantic understanding of 'promote' than 'facilitate'.

The Committee describes the obligation to 'provide for children's rights' in confusing terms.²⁰⁵ It states that this obligation is triggered 'where states are unable, for reasons beyond their control, to realize those rights

²⁰¹ OHCHR (n120) 11 (emphasis original)

²⁰² CESCR GC13 para.47 (provide and facilitate), and ComRC GC19 para.28 (facilitate, provide and promote).

²⁰³ ComRC GC19 para.28 (emphasis added). This directly reflects the language used in CESCR GC13 para.47

²⁰⁴ ComRC GC19 para.28

²⁰⁵ Ibid

themselves by the means at their disposal'.²⁰⁶ There is clearly an error in the text of GC19 that should have instead referred to a *child's* inability 'for reasons beyond their control, to realize' their rights themselves. The Committee requires that in such cases 'reliable, disaggregated data and information are publicly available to assess and monitor the extent to which children are able to exercise their rights'.²⁰⁷ Looking to the work of CESCR is valuable for clarity on the meaning of the obligation. CESCR refers to the obligation to provide as relating to a state's duty 'to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal'.²⁰⁸ This description of the obligation is more in line with general understanding of the obligation to fulfil, and leads to the conclusion that this must have been the intention of the children's Committee in the drafting of GC19.

The obligation to fulfil is described by the Committee as including an obligation to promote. The Committee describes this as including a duty to ensure 'that there is appropriate education and public awareness concerning [in the context of GC19], budget decision-making processes and the impact they have', alongside a requirement to 'continuously assess the outcomes in different groups to identify where more effective promotion is required'.²⁰⁹ This obligation seems much closer to the requirements of 'support for caregivers' and 'awareness-raising' included by the Committee under the obligation to respect in GC17.

²⁰⁶ Ibid

²⁰⁷ Ibid

²⁰⁸ CESCR GC13 para.47

²⁰⁹ ComRC GC19 para.28

The Committee's description of the obligation to fulfil in GC17 makes no mention of the facilitate/promote/provide distinctions. Instead it simply describes the obligation to fulfil Article 31 rights as requiring introduction of 'necessary legislative, administrative, judicial, budgetary, promotional and other measures aimed at facilitating the full enjoyment of the rights provided for in Article 31 by undertaking action to make available all necessary services, provision and opportunities.'²¹⁰ The Committee notes that measures to fulfil Article 31 must be 'developed in collaboration with children themselves', in line with Article 12, as well as other interested parties.²¹¹

The Committee's recommended 'wide range of measures' to fulfil Article 31 rights include eight separate areas: legislation and planning; data collection and research; cross departmental collaboration in national and municipal government; budget; universal design; municipal planning; schools; and training and capacity-building – each expanded upon within GC17 to provide directed normative guidance.²¹² The final measure recommended by the Committee can be seen as *overarching* as it relates to the 'systematic and ongoing training' and capacity-building of *all* 'professionals who work with or for children, or whose work impacts on children' – this is inevitably of broad reach.²¹³ Training should include 'how to create and sustain environments in which the rights under Article 31 can be most effectively realized by all children'.²¹⁴ This is overarching as it impacts the effective application of all other measures outlined by the Committee, and underscores the need for the realisation of the right to play to involve 'a broad and comprehensive approach'.²¹⁵ It is vital that states ensure that the measures taken to

²¹⁰ ComRC GC17 para.54(c)

²¹¹ Ibid para.58

²¹² Ibid para.58(a-h)

²¹³ Ibid para.58(h)

²¹⁴ Ibid

²¹⁵ Ibid para.58(g)

implement the right to play are not limited to government departments or sectors which relate directly to children.²¹⁶

The first four measures reflect those seen elsewhere in the Committee's guidance relating to general implementation of the Convention, for this reason they are not discussed in great detail here, but rather recommendations distinct to GC17 are highlighted.²¹⁷ Such Article 31 distinction is evident in the recommendation that legislation addresses 'the principle of sufficiency – all children should be given sufficient time and space to exercise these rights'.²¹⁸ The Committee requests that '[c]onsideration' be given to the development of a specific policy or framework for the right to play, or for the right to be incorporated within an overall national plan for implementing the Convention.²¹⁹ It highlights a need to recognise, in national plans of action, 'that creating time and space for children's self-directed activity is as important as the provision of facilities and opportunities for organized activities'.²²⁰ This statement is important as it emphasises the need to ensure that resources are not solely directed towards sports clubs or playgrounds, but also towards ensuring time and freedom for play in a variety of ways and spaces. This statement suggests a 'hands-off' aspect to implementing the right to play, emphasising enabling children to direct their own play.

Regarding duties relating to data collection and research, the Committee recommends that states research 'the impact of housing and neighbourhood conditions to understand how [children] use local environments; the barriers

²¹⁶ Ibid para.58(c)

²¹⁷ The Committee provides extensive guidance and discussion on budgetary obligations of States in its GC19.

²¹⁸ ComRC GC17 para.58(a)

²¹⁹ Ibid

²²⁰ Ibid

they encounter in enjoying [their right to play]; the approaches they adopt to surmount those barriers and the action needed to achieve greater realisation' of the right.²²¹ This demonstrates a desire on the part of the Committee that approaches to implementing the right to play are locally informed, by children and their experiences. It reflects an awareness of the impact of the built environment on the enjoyment and realisation of the right to play.²²²

The Committee's stipulation of obligations relating to 'universal design' and 'municipal planning' is consistent with this approach and emphasis.²²³ The Committee attributes the phrase 'universal design' to Ronald Mace, an American architect prominent in the 1980s, and defines it as referring to 'the concept of designing all products and the built environment to be aesthetic and usable to the greatest extent possible by everyone, regardless of their age, ability or status in life'.²²⁴ The Committee also points to Article 4(1)(f) CRPD, which refers to universal design. The Committee recommends that states conduct child-impact assessments to 'assess provision of play and recreation facilities to guarantee equality of access by all groups of children'.²²⁵ Here the Committee refers to an obligation to 'place a priority on the creation of environments which promote the well-being of the child'.²²⁶ It asserts that this is an obligation 'consistent' with those under Article 31. It can be presumed that the Committee is referring to the promotion of well-being consequent to the realisation of the rights under Article 31, and reflects views during the drafting process.²²⁷ The obligation

²²¹ Ibid para.58(b)

²²² Chapters 3 and 6. Ibid para.58(c) where the Committee advises working with departments not traditionally associated with children (e.g. housing, transport etc.)

²²³ ComRC GC17 para.58(e) and (f)

²²⁴ Ibid para.58(e) footnote 17; RL Mace, 'Universal Design in Housing' [1998] 10 *Assist Technol* 21 for an example of Mace's work on Universal Design.

²²⁵ ComRC GC17 para.58(f)

²²⁶ Ibid

²²⁷ Chapter 4 Section 2

of universal design applies to those attempting to develop play environments that work for children of all ages.

The Committee underscores issues of safety and spatial justice, calling on states to address road traffic and design 'zones in which players, pedestrians and bikers have priority', and in this emphasises the importance of the '[c]reation of a safe living environment for *free play*'.²²⁸ It is clear throughout GC17 that the Committee expects such an environment to be offered to children for the realisation of the right to play. States are obliged to engage with relevant non-state actors who may be involved in planning and development. The measures relating to planning are more resource heavy than measures specified under the obligation to respect, though they are vital for the implementation and realisation of the right to play. They will be harder to implement in environments that are already overcrowded and therefore require substantial thought and resources. Such action is necessary to ensure non-discrimination for children in urban environments. These measures are critical for States parties developing new areas, or to implement the right to play within rural environments. They may in some contexts simply require preserving natural land for children to explore and play on.

Regarding schooling, the Committee sees '[e]ducational environments' as playing 'a major role in fulfilling the obligations under Article 31'.²²⁹ Whilst it does not expand on this, it can be assumed that this relates at least in part to the time children spend in educational settings and its influence on the life of the child. This places further importance on issues such as the scholarisation of childhood, availability of education and practices such as

²²⁸ ComRC GC17 para.58(f) (emphasis added)

²²⁹ Ibid para.58(g)

the removal of playtimes (either to allocate more time to structured learning or as punishment).²³⁰ The Committee provides specific guidance on its expectations of the physical environment of educational settings, which are to include safe, protected and inspected 'indoor and outdoor space' that facilitates play both 'during and around school hours'.²³¹ This has implications for the accessibility of school environments outside school hours. The physical environment is to actively promote 'equal opportunities for both girls and boys to play', including through the availability of 'adequate sanitation facilities', and should be designed and developed in collaboration with children.²³²

The Committee refers to issues relating to the scholarisation of childhood, recommending that there is a guarantee of 'appropriate time during the day to ensure that children have sufficient opportunity for rest and play'.²³³ This recommendation demonstrates the need to balance the child's right to education and their right to play, and reflects concerns surrounding a focus simply on academic attainment to the detriment of other developmental and childhood needs explored through play. Whilst the Committee hints that reducing the scholarisation of childhood would necessarily affect things such as homework, it also makes clear that it expects '[l]earning environments' to be 'active and participatory', offering 'playful activities and forms of engagement'.²³⁴ Such environments attempt to marry the rights to education and play, enabling the child to learn in an exploratory, creative and fun manner. The Committee emphasises this specifically for young

²³⁰ Chapters 3 and 6

²³¹ ComRC GC17 para.58(g)

²³² Ibid

²³³ Ibid

²³⁴ Ibid

children, risking a response by States parties that does not account for the need for play and playful engagement in the education of older children.²³⁵

Reflecting on the typology as a whole, the wide variety of measures recommended by the Committee under the three obligations supports Koch's observation that the obligations under the tripartite typology framework 'overlap'.²³⁶ They reflect the complex nature of the right to play and the need for a holistic approach to its implementation.

4.3. Maximum Extent of Available Resources

The concept of the maximum extent of available resources is often viewed as challenging.²³⁷ Some have argued that this concept is 'highly subjective',²³⁸ or could operate to reduce states' obligations to be 'to do nothing'.²³⁹ Kendrick refers to this as 'the idea of conditionality' – that rights are conditional on the ability to fulfil them – and suggests that this poses a significant challenge to the development and understanding of the content, and assessment of violations, of social rights.²⁴⁰ Work has been done to develop the concept of the maximum extent of available resources to try and address such challenges.

In reflecting on the concept and its application under the CRC, Nolan noted that the drafters of the Convention 'recognised' that some ESCR would be fulfilled 'only if sufficient resources were available', and that the issue of

²³⁵ This reflects a broader focus in literature and practice on young children's play, Chapters 2 and 3.

²³⁶ Koch (n150) 92

²³⁷ See e.g., DGD 2007 para.38

²³⁸ Mower (n132) 26

²³⁹ A Kendrick, 'Measuring Compliance: Social Rights and the Maximum Available Resources Dilemma' [2017] 39 *HRQ* 657, 662; Alston and Quinn (n124) 178 argue that 'It is the state of a country's *economy* that most vitally determines the level of its obligations', limiting this further to an assessment of only financial resources (emphasis added)

²⁴⁰ Kendrick (n239) 663

available resources 'was a consistent preoccupation of the drafters'.²⁴¹ The inclusion of this concept thus reflects the situation of wealth and resource availability across a global field, recognizing 'that the pools from which resources can be drawn for realising [ESCRs] will vary'.²⁴² The Committee refers to this in the context of the right to play, recognizing 'the problems arising from limited resources'.²⁴³ This does not reduce a state's commitment or obligations to nil, rather the Committee demonstrates that it will not 'allow a lack of resources to justify inertia on the part of states', and has 'reject[ed] the blunt assertion often made by states that they simply lack the resources necessary' to fulfil ESCRs.²⁴⁴ The Committee 'demands' an inquiry into the accumulation, distribution, and redistribution of resources aimed at securing children's rights and that states 'remain actively seized' in the activity of mobilising resources.²⁴⁵ This places on states a 'burden of demonstrating that every effort has been made to use all its available resources to satisfy as a matter of priority' Convention rights.²⁴⁶ The Committee confirmed an ongoing burden on states to 'regularly review and improve their measures to ensure the availability and maximisation of resources for the rights of all children',²⁴⁷ and to demonstrate implementation 'to the maximum extent of their resources',²⁴⁸ in an 'adequate and timely' manner.²⁴⁹

²⁴¹ Nolan (n4) 259-260

²⁴² Kendrick (n239) 662

²⁴³ ComRC GC17 para.55

²⁴⁴ Tobin (n101) 134; ComRC GC19 para.34 (Committee refer to mismanagement of funds as a violation), GC5 para.7 (requirement for states to seek international assistance in order to address lack of national resources) and para. 8 (Committee refers to States' obligations '[w]hatever their economic circumstances'), and DGD 2007 para.16 (a requirement to ensure the broadest possibly enjoyment of ESCRs); OHCHR (n120) 14

²⁴⁵ Tobin (n101) 128; ComRC GC19 para.66 which requires states to 'mobilize, allocate and spend budget resources' for the realisation of ESCRs

²⁴⁶ Tobin (n101) 111

²⁴⁷ ComRC GC19 para.32. The reference to 'improve' within this sentence provides a link to the concept of progressive realisation; Nolan (n102) questions the choice of terms used by the Committee in this statement, but concludes that although potentially confusing, it does not constitute a normative difference.

²⁴⁸ ComRC GC5 para.7

²⁴⁹ R Uprimny, SC Hernandez and AC Araujo, 'Bridging the Gap: The Evolving Doctrine of ESCR and 'Maximum Available Resources' in KG Young *The Future of Economic and Social Rights* (CUP 2019) 627

This raises the question of what is to be understood by the phrase 'available resources'. States are given a 'wide measure of discretion' in determining what resources they use for the realisation of rights,²⁵⁰ although the extent to which this is 'open-ended' is debated.²⁵¹ What is clear is that the Committee is committed to demonstrate a 'context-sensitive understanding' and approach to assessing this.²⁵² The Committee has a broad understanding of the phrase 'available resources' including financial, human, technological, organisational, natural and information resources, and views resources as not restricted to those available nationally, but rather include those 'available from the international community'.²⁵³ It stipulates that resources must be 'understood in qualitative terms and not solely quantitative'.²⁵⁴ This shows that whilst the Committee is committed to developing a framework for the allocation of financial resources in GC19, it requires states to have a broad and holistic approach to the question of resources. This approach is reflected in GC17. In the context of guidance relating to children in institutions, the Committee states that '[a]vailability of time, appropriate space, adequate resources and equipment, trained and motivated staff and provision of dedicated budgets' are required for the realisation of Article 31 rights.²⁵⁵

Regarding financial resources, GC19 makes it clear that budgets are to be managed in a way that maximises financial resources available to states for realising children's rights. Considering the right to play, the Committee requires states to review their budgets to ensure 'inclusive' allocation of financial resources, that this allocation is proportionally representative of

²⁵⁰ Alston and Quinn (n124) 178

²⁵¹ Ibid, and Tobin (n101) 132

²⁵² Tobin (n101) 132

²⁵³ DGD 2007 para.24 and 6

²⁵⁴ Ibid

²⁵⁵ ComRC GC17 para.51

children in the population as a whole, and that it is 'distributed across the provision for children of all ages'.²⁵⁶ It highlights the need for financial resources to ensure accessible and resourced play spaces, and requires that resources are allocated to ensure equality of access for marginalized children, including children with disabilities.²⁵⁷ Regarding social resources, the Committee emphasises 'the importance of systematically supporting parents and families which are among the most important 'available resources' for children'.²⁵⁸ It made this explicit in reference to the right to play, placing great emphasis on this throughout GC17.

The Committee places importance on the 'provision, training and funding of adequately trained professionals'.²⁵⁹ It makes clear that states are obliged to mobilise resources not under their direct control, including private actors. Throughout GC17 the Committee refers to 'all professionals working with and for children'²⁶⁰ – including teachers, policymakers, social workers, planners and architects – demonstrating a belief that the realisation of the right to play requires support and action from a wide range of individuals, further emphasising resources as not solely financial.²⁶¹

Ultimately, as states take steps towards the realisation of children's ESCRs, including their right to play, they are 'required to undertake *all possible measures* towards' this.²⁶² They are obliged to 'ensure the *broadest possible* enjoyment of relevant rights within the limits of the resources that are available to them',²⁶³ whilst paying 'special attention' to 'the most'

²⁵⁶ Ibid para.57(d)

²⁵⁷ Ibid

²⁵⁸ DGD 2007 para.25

²⁵⁹ Tobin (n101) 128 citing ComRC, 'Report of the Forty-Sixth Session' (22 April 2008) CRC/C/46/3 para.66; GC17 para.58(h)

²⁶⁰ GC17 para.18, 57(c), 58(h); Section 4.2.1.3 on obligations to fulfil

²⁶¹ ComRC GC17 para.32, 57(d), 58(h)

²⁶² ComRC GC5 para.8 (emphasis added)

²⁶³ DGD 2007 para.16 (emphasis added)

vulnerable and disadvantaged groups,²⁶⁴ and ensuring that 'any decisions of allocation of resources' are not discriminatory and do 'not impact negatively on a particular group of children'.²⁶⁵ The use of resources may require reallocation or prioritisation of resources,²⁶⁶ must seek to be effective, and must not be tokenistic. The Committee's position reflects a belief that 'the resources of a state are never fixed or determinate' and must be approached dynamically with the aim of fully realising Convention rights.²⁶⁷ States must implement the right to play in line with such guidance to meet their obligations under Article 31.

4.4. Progressive Realisation

The concept of progressive realisation received nothing like the attention accorded to the issues of resources during the drafting process of the Convention and was not raised in relation to Article 4.²⁶⁸ This is unsurprising as there is no reference to progressive realisation in this provision. Nevertheless, the Committee refers to progressive realisation throughout its work on ESCR, and has demonstrated a desire to 'deliberately read' the concept into the text of Article 4.²⁶⁹ The Committee states that the concept of progressive realisation is introduced and included in Article 4 due to its reflection of 'a realistic acceptance that a lack of resources... can hamper the full implementation of [ESCRs] in some States'.²⁷⁰ It adopted this concept despite acknowledging that it 'is often misunderstood'.²⁷¹ The Committee explicitly mentions progressive realisation in the context of the right to play

²⁶⁴ ComRC GC5 para.8; Ibid para.16

²⁶⁵ DGD 2007 para.16; ComRC GC5 para.8

²⁶⁶ K Roth, 'Defending Economic, Social and Cultural Rights: Practical issues faced by an international human rights organisation' [2004] 26 HRQ 63, 65

²⁶⁷ Tobin (n101) 128

²⁶⁸ Nolan (n4) 260

²⁶⁹ Nolan (n102) 7

²⁷⁰ ComRC GC5 para.7; CESCR GC3 para.1 and 3

²⁷¹ DGD 2007 para.46

in GC17, resting heavily on the work of CESCR and providing no further expansion on the meaning of the concept other than in the context of non-retrogression.²⁷²

Rather than the concept of progressive realisation relegating ESCRs to being 'not immediately applicable' and 'merely of aspirational character',²⁷³ it acknowledges 'that full realisation of all [ESCRs] will generally not be able to be achieved in a short period of time'.²⁷⁴ It requires states to move towards the full realisation of ESCRs over time rather than being mandated to immediately achieve full realisation.²⁷⁵ This is not to say that there are no immediate obligations relating to ESCRs. Obligations to respect and protect are immediate in nature, as is the obligation of non-discrimination. The Committee claims that the immediate obligation to take planned steps, or 'targeted measures' towards the realisation of ESCRs, and to do so 'as expeditiously and effectively as possible' is imposed through the concept of progressive realisation,²⁷⁶ requiring swift action.²⁷⁷ The concept acts as a 'flexibility device'.²⁷⁸ It cannot be employed as 'an escape hatch for states'.²⁷⁹ The work of CESCR and the CRC Committee in developing the normative content of this obligation ensures that ESCRs, including the right to play, are not condemned to 'notions of high-priority goals' as opposed to 'binding constraints'.²⁸⁰ This has implications for the treatment of the right to play as a luxury right.

²⁷² ComRC GC17 para.55

²⁷³ DGD 2007 para.46

²⁷⁴ CESCR GC3 para.3; Kendrick (n239).662; Alston and Quinn (n124) 172 who refer to progressive realisation as 'the linchpin' of ICESCR, mirroring 'the inevitably contingent nature of state obligations'.

²⁷⁵ Nolan (n4) 260

²⁷⁶ DGD 2007 para.47; Nolan (n102) 8-9; Kendrick (n239) 662; Alston and Quinn (n124) 166

²⁷⁷ DGD 2007 para.6

²⁷⁸ CESCR GC3 para.3

²⁷⁹ Tobin (n101) 111

²⁸⁰ V Gauri, 'Social Rights and Economics: Claims to Health Care and Education in Developing Countries', in P Alston and M Robinson (eds) *Human Rights and Development: Towards Mutual Reinforcement*, (OUP 2005) 73

The concept of progressive realisation includes a goal to progressively achieve higher levels of rights realisation.²⁸¹ The Committee hints to this in relation to the right to play in GC17, expressing the value of states' obligations relating to data collection and research in 'measuring progress in implementation' of the right.²⁸² Alston and Quinn see this as a central element to the concept of progressive realisation by the drafters of ICESCR.²⁸³ They argue that the concept of progressive realisation marks a need for 'positive advance'.²⁸⁴ The Committee affirms that states must establish '[c]lear and consistent qualitative and quantitative goals and indicators' to 'illustrate the progressive realisation of children's [ESCRs] to the maximum extent of available resources',²⁸⁵ including the right to play.²⁸⁶

4.5. Minimum Core

The Committee referred to the minimum core concept as 'standing parallel' to progressive realisation.²⁸⁷ Young describes the concept as seeking 'to establish a minimum legal content for the notoriously indeterminate claims of [ESCRs]'.²⁸⁸ The Committee describes this concept of 'core obligations' as ensuring 'minimum conditions under which one can live in dignity'.²⁸⁹ The CESCR contends that reading human rights treaties in a way that does not establish minimum core obligations would 'deprive' them of their '*raison d'être*'.²⁹⁰ What comprises the minimum core of each ESCR 'remains

²⁸¹ Tobin (n101) 137

²⁸² ComRC GC17 para.58(b)

²⁸³ Alston and Quinn (n124) 174-5 citing UN Docs E/CN.4/SR.236, E/CN.4/SR.233, E/CN.4/SR.308. They suggest drafters saw a need for the absence of a 'fixed goal' and lack of a 'limit' to the rights.

²⁸⁴ Ibid 174

²⁸⁵ ComRC GC19 para.32

²⁸⁶ ComRC GC17 para.58(b)

²⁸⁷ DGD 2007 para.49; Tobin (n101) 112

²⁸⁸ K Young, 'The minimum core of economic and social rights: a concept in search of content' [2008] 33 *YJIL* 133, 113

²⁸⁹ DGD 2007 para.49; OHCHR (n120) 14

²⁹⁰ CESCR GC3 para.10

contentious’,²⁹¹ posing a distinct challenge for the application of the obligation.

CESCR addressed this question in GC3, providing a non-exhaustive exemplar list of the minimum core of some rights as an ‘example’ of minimum core content.²⁹² However, the Committee’s use of the same list in their work is phrased in a way that leads the reader to understand it as exhaustive, and risks considerably weakening the protection of rights under the CRC, particularly those rights, like the right to play, not included in ICESCR.²⁹³ The wording implies that a lack of explicit reference to play may mean that there is no minimum core to the right. Some argue that the difference in language is not crucial as ‘it is clear’ the Committee sought to ‘make reference to [CESCR’s] understanding of the minimum core obligation’.²⁹⁴

Warwick has examined the development and understanding of the concept throughout UN treaty bodies. He suggests that nine themes can be drawn from CESCR’s GCs as constituting the core content of a right, but claims that the lack of consistency in their application makes it difficult to derive ‘a generic picture of the core content.’²⁹⁵ Scholars have criticised the inconsistent approach to the minimum core, arguing this potentially renders it void of power and purpose, lacking in clarity and practical understanding, and too problematic for use.²⁹⁶ Additional criticism has been levelled at the CRC Committee for neglecting to address ‘children’s particular vulnerability to violations of ESR’, and disappointment has been expressed at the failure

²⁹¹ Tobin (n101) 143

²⁹² CESCR GC2 para.10

²⁹³ DGD 2007 para.49

²⁹⁴ Nolan (n102) 11

²⁹⁵ B Warwick, ‘Social Minima at the UN Treaty Bodies: Minimal Consistency?’ in T Kotkas, I Leijten and F Pennings (eds.) *Specifying and Securing a Social Minimum in the Battle Against Poverty* (Hart, 2020) 217-8. Warwick criticises CPDR, CEDAW and ComRCs for not engaging the minimum core/social minimum ‘with any regularity’ (221); ComRC GC5 para.1

²⁹⁶ Warwick (n295) 218-9, J Tobin ‘Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation’ [2010] 23 *Harv HRJ* 1, 26; and Young (n288)

of the Committee to suggest prioritisation of children 'in states' efforts to meet the minimum core of the rights of everyone'.²⁹⁷ Whilst this criticism is valid, Warwick praises the CRC Committee's engagement with the minimum core as having 'some substance', claiming that whilst '[t]he Committee links its work to that of the CESC' it 'adds its own content'.²⁹⁸ Specifically Warwick notes the Committee's description of the minimum core 'as part of the Article 4 duty to take all appropriate measures (in distinction to the CESC's positioning of the core as implied generally by the ICESC)'.²⁹⁹ This decision by the Committee arguably strengthens the position of the concept within the application of the CRC.

GC17 makes no reference to a minimum core. However, legislative protection for children's rights has been described as fundamental,³⁰⁰ and CESC has stated that 'the obligations to monitor the extent of the realisation, or more especially the non-realisation, of [ESCs], and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints',³⁰¹ implying that these may constitute an element of the minimum core requirements of all ESCs, including the right to play.³⁰² The work of the Committee so far does not lead to a clear understanding of the minimum core of the right to play.

4.6. Non-Retrogression

The Committee described the concept of maximum extent of available resources as including an obligation of non-retrogression.³⁰³ This concept

²⁹⁷ Nolan (n4) 272-3

²⁹⁸ Warwick (n295) 221

²⁹⁹ Ibid

³⁰⁰ Section 4.6 for more on this, Warwick (n295) and ComRC GC17 para.58(a)

³⁰¹ CESC GC3 para.11

³⁰² ComRC GC17 para.58(b)

³⁰³ ComRC GC19 para.31

has been linked to progressive realisation.³⁰⁴ The Committee demonstrated a commitment to the concept throughout its work, including in GC17.³⁰⁵ It has not provided critical engagement with the concept, failing to acknowledge its complicated history.³⁰⁶

The Committee describes this obligation as requiring states not to 'allow the existing level of enjoyment of children's rights to deteriorate'.³⁰⁷ Warwick describes the concept as 'uniquely [tying] States to what they have already achieved' and oriented towards stability.³⁰⁸ The Committee qualifies its description with a statement that enables states to take 'regressive measures' in periods of economic crisis 'after assessing all other options and ensuring that children are the last to be affected, especially children in vulnerable situations'.³⁰⁹ This offers a realistic approach to the principle that continues to protect children's rights, and particularly those of vulnerable children, due to its explicit description of the processes that must be exhausted to permit this. The Committee requires a clear demonstration and justification of the necessity, reasonableness and proportionality of regressive measures, and proof that they are 'non-discriminatory and temporary'.³¹⁰ It obliges states to restore affected rights 'as soon as possible'.³¹¹ This includes evidence of the 'full use of the maximum available resources'.³¹² States must not 'encroach' on the minimum core content of rights, nor are they permitted to compromise immediate obligations 'even in

³⁰⁴ B Warwick, 'Unwinding Retrogression: Examining the Practice of the Committee on Economic, Social and Cultural Rights' [2019] 19 *HRLR* 467, 468 where it is argued that the concept 'can be read as little more than a set of stern words to States engaged in anything less than enthusiastic, 'expeditious and effective' progress'.

³⁰⁵ ComRC GC17 para.55

³⁰⁶ Warwick identifies nine 'versions' of the concept, with some holding 'fundamental conceptual divergences', lending the concept to suffer from 'practical and conceptual fuzziness' (n307) 469 and 471

³⁰⁷ ComRC GC19 para.31

³⁰⁸ Warwick (n304) 471

³⁰⁹ ComRC GC19 para.31

³¹⁰ Ibid para.31; Warwick (n304) 471

³¹¹ ComRC GC19 para.31; Warwick (n304) 471

³¹² CESCR GC3 para.9; OHCHR (n120) 16

times of economic crisis'.³¹³ The Committee's description of this concept reveals an attempt to render the non-retrogression obligation child-specific, including by stating that children should be the last affected and underscoring child participation.³¹⁴

In GC17 the Committee makes clear that 'no regressive measures in relation to the rights under Article 31 are permitted'.³¹⁵ Whilst Nolan suggests that Committee's choice of terminology – regressive as opposed to retrogressive – is 'inaccurate', she argues that this refers to 'the same conditions imposed by the [CESCR]... together with the added requirement that children's expressed views on the issue should be considered'.³¹⁶ Warwick shows that CESCR use 'regressive' within its work, suggesting that this language confusion is not restricted to the CRC Committee.³¹⁷ He argues that 'retrogressive' is preferable 'as it as it contributes a particularity around which an insulated legal meaning can be formed and speaks specifically to the human rights context'.³¹⁸ The Committee states that deliberately regressive measures to Article 31 rights would need to be proven as 'carefully considered' amongst 'all the alternatives', and that 'children's expressed views' on the matter must be given due weight in line with Article 12.³¹⁹ States must provide clear justification of any retrogressive steps pertaining to the right to play.

4.7. International Cooperation

The obligation of international cooperation has two fundamental elements. It obliges states with limited resources (most commonly developing states)

³¹³ Warwick (n304) 221 and ComRC GC19 para.31

³¹⁴ Nolan (n102) 10

³¹⁵ ComRC GC17 para.55

³¹⁶ Nolan (n102) 9-10

³¹⁷ Warwick (n304) 469

³¹⁸ Ibid 470

³¹⁹ ComRC GC17 para.55

to seek international assistance and obliges states with greater resources (most commonly developed states) to provide assistance internationally.³²⁰ In seeking international assistance, the Committee advises states with poor resources to seek 'bilateral, regional, interregional, global or multilateral' cooperation, from other states or from organisations such as the United Nations.³²¹ Such support may include 'technical and financial support'.³²² States are expected to demonstrate 'that they have made every effort to seek and implement international cooperation' for the realisation of children's rights, extending the burden of proof on states to issues of international cooperation and assistance.³²³ The parallel obligation, to provide cooperation and assistance,³²⁴ 'gives rise to legally binding obligations' that are of an extraterritorial nature.³²⁵ The Committee confirms that obligations to respect, protect and fulfil extend extraterritorially, framing them as encompassing 'all children in all countries with no exceptions'.³²⁶ It views obligations pertaining to the implementation of children's rights as including a 'shared responsibility' of 'global implementation' for all States parties to the Convention.³²⁷ It associates this responsibility as deriving from both Article 4 of the CRC and Articles 55 and 56 of the Charter of the United Nations.³²⁸

³²⁰ ComRC GC19 para.35; M Wabwile, 'Implementing the Social and Economic Rights of Children in Developing Countries: The Place of International Assistance and Cooperation', [2010] 18 *IJCR* 355; S Toope, 'The Convention on the Right of the Child: Implications for Canada', in M Freeman (ed) *Children's Rights: A Comparative Perspective*, (Dartmouth Publishing, 1996) 54; A Chapman and S Russell, 'Introduction', in A Chapman and S Russell (eds.) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Intersentia, 2002) 11; DGD 2007 para.51 refers to a 'responsibility to seek' (emphasis added)

³²¹ ComRC GC19 para.35-6 and ComRC GC5 p.63

³²² ComRC GC19 para.36

³²³ *Ibid* para.36

³²⁴ *Ibid* para.35

³²⁵ Nolan (n102) 12; ComRC GC5 para.7

³²⁶ DGD 2007 para.51

³²⁷ DGD 2007 para.51, ComRC GC5 paras.7, 60, 62; ComRC GC5 para.61 where the Committee refers to the implementation of the Convention as a 'cooperative exercise' and discuss allocation of aid budgets for child rights realisation; ComRC GC19 para.61

³²⁸ ComRC GC5 para.60; ComRC GC19 para.35 where the Committee refers to a broader duty to cooperate in the promotion, respect and observance of human rights.

The Committee includes international cooperation as an explicit obligation relating to the right to play in GC17.³²⁹ The Committee 'encourages international cooperation... through the active engagement' of UN agencies 'as well as international, national and local NGOs'.³³⁰ No mention is made to an expectation that states work with other states to realise Article 31. This risks undermining the realisation of the right to play and its position as a fundamental, not "luxury", right as it suggests a lower degree of duty and obligation pertaining to the right to play as that pertaining to other CRC rights. The Committee makes one additional reference to international cooperation in GC17 in the context of the obligation to protect and online safety, requiring states to undertake measures 'to reduce the impunity of abusive adults through legislation and international cooperation'.³³¹

5. Conclusion

The measures required for the realisation of the right are far-reaching and multifaceted. The very nature of play means that 'children are not entirely dependent on the assistance of adults to enable them to exercise' their right.³³² Children will seek to play in all environments - the Committee refers to this as a 'spontaneous urge' – and indeed, they note that children 'will seek out opportunities to do so in the most unfavourable environments'.³³³ Nevertheless, this does not avail the state of their obligations and duty. Rather, the discussion held in this chapter shows that the content of the

³²⁹ ComRC GC17 para.59

³³⁰ Ibid para.59

³³¹ Ibid para.57(d)

³³² Lansdown and Tobin (n44) 1212-3. They, dangerously, follow with a statement that suggests that all that is required in order for children to enjoy their rights 'independently of adult involvement or assistance' is for children to have 'sufficient freedom and time'. This neglects the important role of other actors in providing space, opportunity and other resources for play.

³³³ ComRC GC17 para.32

right to play requires much of the state for all children to fully realise their right to play.

Chapter 6: A Multiple-Case Study of the United Kingdom and Tanzania

1. Introduction

This chapter tests the findings and discussion in the previous chapters against a multiple-case study of the United Kingdom and Tanzania.¹ This enables previous discussion to be developed by taking somewhat abstract and normative discussion and placing it in the lived context. This chapter fits into the socio-legal nature of the thesis as it looks at the law in action. The aim of the study was to understand how the right to play is incorporated into national law and implemented by States parties to the Convention on the Rights of the Child. As the study progressed, it became apparent that a major aspect of understanding this required asking 'what challenges must be overcome to realise the right to play' and 'why has the right to play been incorporated or implemented in a certain way'? It is common for research questions to develop in the process of conducting empirical work 'if new issues become apparent'.² This section provides an explanation and justification of the methods and the data analysis process.

1.1. Method choice and justification

Empirical research refers to research 'based in experience or experiment'.³ In law it includes study of 'institutions, rules, procedures, and personnel of the law, with a view to understanding how they operate and what effects they have'.⁴ The use of empirical research is appropriate as the aim of this

¹ The research conducted for this study concluded prior to the COVID-19 Pandemic.

² RE Stake, *The Art of Case Study Research* (Sage, 1995) 9

³ F Bell, 'Empirical Research in Law' [2016] 25 *GLR* 262, 263

⁴ E Baldwin and G Davis, 'Empirical Research in Law', in M Tushnet and P Cane (eds.) *The Oxford Handbook of Legal Studies* (OUP, 2005) 881

study is to understand how the right to play operates in the UK and Tanzania, and what effects the right as enshrined in the Convention has in these states. For this research, the need for case studies arose from 'the desire to understand complex social phenomena', specifically the application of international law and norms to the national and local context, and the realisation of international law for children.⁵ Case studies provide opportunities to go further than the law books 'to focus in-depth on a "case" and to retain a holistic and real-world perspective',⁶ or law in action. The use of the case study in the present context is of considerable value. The qualitative choice of method is appropriate for this study as the questions asked are 'exploratory' in nature.⁷ This allows for more open-ended and investigative questioning.

The study has been conducted using the multiple-case study approach, as a "'two-case" case study'.⁸ These types of case study are attractive as '[a]nalytic conclusions independently arising from two cases, as with two experiments, will be more powerful than those coming from a single-case (or single experiment) alone'.⁹ It is expected that findings of the study, where they agree, can be offered greater weight. Findings that do not appear in both cases may be seen as context specific. Including two cases in the study enables discussion from elsewhere in the thesis to be triangulated against the study, and for cross-case triangulation or '[d]ata source triangulation' within the study.¹⁰ This form of triangulation tests whether the observations and reports 'carr[y] the same meaning when found under different circumstances'.¹¹ The choice of method enables triangulation of the

⁵ RK Yin, *Case Study Research and Applications: Design and Methods* (6th ed., Sage, 2018) 5

⁶ Ibid

⁷ Yin (n5) 10

⁸ Ibid 61 and 226

⁹ Ibid 61

¹⁰ Stake (n2) 113

¹¹ Ibid

findings on two levels, increasing the value, quality and validity of the research.

1.2. Country choice and justification

In choosing cases it is important to consider that 'some cases would do a better job than others' at addressing the research questions.¹² This makes the choice process a significant aspect of the study. 'Sometimes a "typical" case works well but often an unusual case helps illustrate matters we overlook in typical cases'.¹³ No 'typical' case can be found for the national application of international law as no country is 'typical'. The cases chosen for this study 'maximise what we can learn'¹⁴ as they differ in terms of economic background and capability, incorporation of the Convention,¹⁵ and global positionality.¹⁶ In choosing case studies, the question 'which cases are likely to lead us to understandings, to assertions, perhaps even to modifying of generalizations?'¹⁷ was asked.¹⁸ These cases meet the goals of balance, variety and 'opportunity to learn',¹⁹ due to the current lack of research of this kind, and the clear differences between the two states.

1.3. Interview Sample and Data Collection

The study seeks to understand lived experiences in context and the meanings associated with these experiences. In qualitative research this is often gathered from participants' perspectives.²⁰ To fulfil the research aims, interviews were conducted with experts in the field. Participant expertise

¹² Ibid 4

¹³ Ibid

¹⁴ Ibid

¹⁵ Discussed in detail in Section 2.1

¹⁶ The UK is a Western state and Tanzania is in the Global South.

¹⁷ Stake (n2) 4

¹⁸ For more discussion on generalisations from case studies, Yin (n5) 20

¹⁹ Stake (n2) 6

²⁰ JA Maxwell and LE Reybold, 'Qualitative Research', in JD Wright (ed.) *International Encyclopedia of the Social and Behavioural Sciences* (2nd Ed., Vol.19, Elsevier, 2015) 685

was drawn upon as '[m]uch of what we cannot observe for ourselves has been or is being observed by others', and understanding a phenomenon is thus aided by finding an informant.²¹ Nine interviews were conducted with experts: four from the UK and five from Tanzania. Participants were recruited using a mix of purposive sampling and snowball sampling, 'using the social networks of one or two initial informants' to increase the pool of participants.²² Balance was sought in choosing participants. The four UK participants were chosen for their expertise in each nation (Wales, England/UK, Scotland and Northern Ireland). Whilst most participants with expertise in Tanzania were recruited through snowball sampling, one participant was sought specifically due to their professional position in an international play-focused NGO, and another for their role in advocating for the Law of the Child Act 2009.

All participants were informed of the research aims and expected outputs, and all gave informed consent and permission to be named as follows. For the UK: Marianne Mannello, a senior member of Play Wales;²³ for Scotland, Marguerite Hunter-Blair, CEO of Play Scotland; for Northern Ireland, Jacqueline O'Loughlin, a senior member of Playboard Northern Ireland (PlayboardNI); for England, Adrian Voce OBE, the President of European Child Friendly Cities Network, and previous senior member of Play England (PlayEngland). For Tanzania the participants were as follows: Dr Kate McAlpine, a consultant researcher with expertise in Tanzania and CEO of Community for Children's Rights, a Tanzanian-based NGO; Craig Ferla, Country Director for Children in Cross-Fire, a Tanzanian-based NGO working with children (CCF); Ken Campbell, Founder and CEO of YES! Tanzania, an

²¹ Stake (n2) 64 and 67

²² D Silverman, *Interpreting Qualitative Data* (5th ed., Sage, 2014) 60-1

²³ Marianne's interview was interrupted by poor phone signal. Marianne followed up with answers to my questions via email and amended the transcript to fill inaudible gaps.

NGO supporting organisations 'in the most disadvantaged urban communities of Tanzania to transform young people's lives through sport';²⁴ Eric Guga, Coordinator of Tanzania Child Rights Forum, a network of over two hundred child rights based organisations from throughout Tanzania to advocate for children's rights reform (TCRF). The final participant was a senior manager for an international play-focused NGO working in Tanzania, who requested anonymity. The participant is pseudonymised and referred to as Malcolm Stewart. The participants have considerable expertise in the incorporation and implementation of the right to play in the UK and Tanzania. This is particularly valuable for Tanzania due to the unavailability of secondary resources.²⁵

After confirming consent, interviews were held with each participant. This involved three face-to-face interviews, five via Skype, and one by phone-call/email. The choice of format was based on participant preference and feasibility of face-to-face interviews (cost, time, location etc.). Interview recordings were sent to Bristol Transcription Service, and transcripts were sent to the participants for comment. Only Mannello chose to amend her transcript, to fill inaudible gaps from the phone interview. The process of confirming transcription with the participants increased the validity of the study through 'member checking', ensuring that 'the interpretations accurately represent them'.²⁶

2. Discussion of Findings

The data provide a critical outlook on the implementation of the right to play. The discussion of findings that follows strives to ensure validity by seeking

²⁴ Interview with Ken Campbell, Skype, 9th February 2018

²⁵ Interview with Dr.Kate McAlpine, London, 6th December 2018

²⁶ EW Creswell and DL Miller, 'Determining Validity in Qualitative Inquiry' [2000] 39 *TheoryPract* 124, 124-125

to be true to the data. The discussion explores the realisation of the right to play in planning and education in both the UK and Tanzania. It reflects on the role of political and community support in realising the right to play, the challenges that must be overcome to achieve such support, and recommendations on how this can be achieved. Prior to discussing these topics the legislative frameworks for the right to play in the UK and Tanzania are described.

Chapter 5 discussed the range of measures of implementation that could and should be taken to realise the right to play. Given the vast scope of such measures it is not possible to provide a comprehensive description of every policy, practice or budgetary allocation in the UK and Tanzania that may have an effect on the realisation of the right to play, particularly when accepting that all policy areas 'affect children's lives'.²⁷ This is partly, but not exclusively, so as 'children play everywhere if they have chance'.²⁸

2.1. Legislation: Incorporation of the Right to Play

The need for legislation to support the realisation of the right to play was raised repeatedly in interviews. Voce highlighted a challenge of international law, stating that 'it doesn't have much teeth' without national incorporation.²⁹ O'Loughlin suggested incorporation was a necessary 'next step', 'elevating' the right with 'legislative controls'.³⁰ National incorporation, or 'legislative backing',³¹ offers high level governmental acknowledgement of the right.³²

²⁷ Interview with Adrian Voce, London, 23rd March 2018

²⁸ Ibid

²⁹ Ibid

³⁰ Interview with Jacqueline O'Loughlin, Skype, 19th April 2018

³¹ Interview with Malcolm Stewart, Newcastle, 1st February 2018

³² Interview with Marguerite Hunter-Blair, Skype, 10th April 2018

The benefits of incorporation of the right to play were made clear during interviews. Legislative support is stronger than that of policy.³³ It strengthens the likelihood of continued support with changes of government. Voce described the vulnerability of policies that do not 'need a debate in parliament' and contrasted this with legislation: 'it's just easier to abandon a government strategy than it is to change the statute book'.³⁴ He shared regret that play advocates in England 'didn't push harder for legislation in the 2000s', however he acknowledged the likelihood of legislation was low.³⁵ Another described benefit of national legislation is increased accountability,³⁶ as it enables interested parties to advocate and lobby directly to national governments, and enables issues to be heard in courts.³⁷ Legislation was portrayed as increasing the potential of local authorities implementing measures to fulfil the right to play. Hunter-Blair revealed that in Scotland local authorities currently 'struggle' to meet statutory functions due to being 'seriously under-resourced in certain areas', resulting in a need to make 'very tough decisions' on spending.³⁸ Similar resource constraints were expressed by Stewart, Campbell and Ferla.³⁹

To effectively implement children's rights, and fulfil their Convention obligations, States parties are called upon to incorporate the Convention into domestic legislation, according to Article 4 of the Convention.⁴⁰

2.1.1. Legal Framework for the Right to Play in the United Kingdom

³³ O'Loughlin (n30)

³⁴ Voce (n27)

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Hunter-Blair (n32)

³⁹ Stewart (n31); Campbell (n24); Interview with Craig Ferla, Skype, 22nd February 2018

⁴⁰ Chapter 5

The UK ratified the Convention on the Rights of the Child on 16th December 1991, and it entered into force on 15th January 1992. 'A treaty entering into force and a treaty being in force in the state are not the same'.⁴¹ In legal systems such as that of the UK 'the obligations of a treaty only become domestically applicable after being adopted by [parliament] in the form of a law'.⁴² International treaties 'cannot automatically change domestic law or rights',⁴³ which means that they have 'no effect in municipal law until an Act of Parliament is passed to give effect to it'.⁴⁴ This potentially presents an obstacle in terms of the realisation of Convention rights, including Article 31, as for 'a treaty provision to become part of domestic law, the relevant legislature must explicitly incorporate it into domestic law'.⁴⁵ This does not mean that the Convention is without power. The government is bound by duties under international law, and is responsible for not complying with the treaty.⁴⁶ Where direct incorporation has occurred, it has most often followed a 'piecemeal' approach with states 'opting for an à la carte selection of rights protections rather than a full menu of rights',⁴⁷ which leads to unbalanced protection of Convention rights.

The UK has 'further layers of legalities to navigate when it comes to incorporating human rights treaties into domestic legislation due to

⁴¹ K McCall-Smith, 'Incorporating International Human Rights in a Devolved Context' (*European Futures*, 17 September 2018) <<https://www.europeanfutures.ed.ac.uk/Article-7114>> accessed June 2019

⁴² F Korenica and D Doli, 'The Relationship Between International Treaties and Domestic Law: A View from Albanian Constitutional Law and Practice' [2012] 24 *PaceIntLRev* 92, 96; For more discussion on the differences between monism and dualism, JG Starke, 'Monism and Dualism in the Theory of International Law' [1936] 17 *BYIL* 66; P-H Verdier and M Versteeg, 'International Law in Domestic Legal Systems: An Empirical Perspective' in *Proceedings of the Annual Meeting (ASIL) Vol 108, The Effectiveness of International Law* (CUP, 2014); P Malanczuk and MB Akehurst (1997) *Akehurst's Modern Introduction to International Law* (7th ed, Routledge, 1997)

⁴³ A Lang, 'Parliament's role in ratifying treaties', Briefing Paper No.5855 (House of Commons Library, 2007) 3

⁴⁴ Malanczuk and Akehurst (n42) 66

⁴⁵ Lang (n43) 6

⁴⁶ Ibid; Malanczuk and Akehurst (n42) 65

⁴⁷ McCall-Smith (n41)

devolution.⁴⁸ Westminster had devolved its powers by 1999,⁴⁹ the basis of which can be found in the Northern Ireland Act 1998, Wales Act 2017, and the Scotland Act 2016. 'Human rights are a core pillar of the devolution settlements and there is evidence of stronger institutional commitment to human rights in the devolved nations', including with regard to children's rights.⁵⁰ This has been demonstrated in recent claims and commitments in the UK, with the Scottish Government committing to incorporate the CRC in full in its national legislation,⁵¹ and all parties in Northern Ireland claiming they would do the same, in the run up to a general election.⁵²

England

England's legislation is the same as that for the United Kingdom. The CRC has not been incorporated in full in England and the Children's Act 1989 – the principle legislation relating to children in England – makes no mention of the Convention, nor does it proffer any comparable protection of the right to play.

A Department for Children, Schools and Families briefing suggests the right to play is protected under English national legislation, pointing to Section 507A and 507B of the Education Act 1996.⁵³ Section 507A of the Education

⁴⁸ Ibid

⁴⁹ R Deacon and A Sandry, *Devolution in the United Kingdom* (EUP, 2007) 2

⁵⁰ A Donald et al., *The UK and the European Court of Human Rights*, Research Report 83 (EHRC, 2012) 22 citing J Gordon, 'A Developing Human Rights Culture in the UK? Case Studies of Policing' [2010] 6 *EHRLR* 609, 612-613

⁵¹ Scottish Government, 'Strengthening Children's Rights' (20 November 2019), <<https://news.gov.scot/news/strengthening-childrens-rights>> accessed December 2019

⁵² NICCY Children's Summit, (Belfast, 20th November 2019). See: L Lundy (@ProfLauraLundy), 'Wow!!all 5 politicians from our major political parties just said they would incorporate the #UNCRC in law in NI. Let's hope we can get the Assembly up and running soon', (Twitter, 20 November 2019)

<<https://twitter.com/ProfLauraLundy/status/1197149387421605888?s=08>> accessed November 2019

⁵³ Department for Children, Schools and Families (DCSF), *The United Nations Convention on the Rights of the Child: How legislation underpins implementation in England: Further information for the Joint Committee on Human Rights*, (March 2010) 123

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/296368/uncrc_how_legislation_underpins_implementation_in_england_march_2010.pdf> accessed June 2019

Act requires that local authorities 'secure that the facilities for primary and secondary education provided for their area include adequate facilities for recreation and social and physical training for children until the age of 13', including 'playing fields, play centres' and others. Section 507B, addressing persons aged 13-19, does not reference play but does mention secure access to 'sufficient educational leisure-time activities' and 'sufficient recreational leisure-time activities'. The exclusion of a reference to play in this context reflects the limited understanding and considerable confusion around what constitutes play in adolescence. These provisions, and DCSF's claim that they protect the right to play and demonstrate compliance with the CRC⁵⁴ highlights the issues of the relationship between play and education, and the lack of understanding of the scope and content of the right to play.

Wales

The Rights of Children and Young Persons (Wales) Measure 2011 proscribes a duty on Welsh Ministers 'to have due regard to the Convention on the Rights of the Child' in 'any of their functions'.⁵⁵ The Welsh Government has enacted and implemented legislation to realise the right to play in its Children and Families (Wales) Measure 2010. This Measure addresses child poverty, play, and participation and imposes a Play Sufficiency Duty on Welsh local authorities, which is legally enforceable. Section 11 of the Children and Families Measure outlines this duty, stipulating that it includes a requirement to 'assess the sufficiency of play opportunities in its area for children', a requirement to 'secure sufficient play opportunities in its area, so far as is reasonably practicable, having regard to its assessment', and to publish information about play opportunities throughout the authority.

⁵⁴ Ibid 4

⁵⁵ S 1(1)

The Children and Families Measure defines the Play Sufficiency Duty as 'having regard to quantity and quality'.⁵⁶ Subsequent guidance on the Play Sufficiency Assessments extends this. The Play Sufficiency Assessment (Wales) Regulations 2012 provide guidance. They stipulate that assessments consider the number and age range of children within the authority, any cultural needs for children, spaces for play, and measures used to promote children's play, for example 'traffic calming and safe street schemes'.⁵⁷ The Regulations oblige local authorities to consult children, parents and relevant organisations in the development of these assessments, reflecting a duty to comply with Article 12 of the CRC when addressing the right to play. They prescribe that Play Sufficiency Assessments include an Action Plan to maintain or improve the play situation in the local authority.

Statutory guidance provides direction on the scope and content of the Play Sufficiency Duty, and on what is to be understood as sufficient. The guidance recognises that 'clearly setting out a required quantity and quality of play opportunities for a particular area is not a straightforward task as it depends on many variables'.⁵⁸ Its list of variables is wide ranging, including natural and built environment, geography of the area, demography, existing provisions, and organisational structures.⁵⁹ The Welsh Government acknowledges 'that what is considered as sufficient and achievable will depend on these variables and should be determined locally... [in] consultation with children, their families and communities'.⁶⁰

⁵⁶ S 11(6)

⁵⁷ S 3

⁵⁸ Welsh Government, *Wales - A Play Friendly Country: Statutory Guidance* (July 2014) 16 <<https://gov.wales/sites/default/files/publications/2019-07/wales-a-play-friendly-country.pdf>> accessed December 2019; Chapter 5

⁵⁹ Ibid 16

⁶⁰ Ibid

It defines 'quantity', a specified element of sufficiency, as resulting in a situation 'that any child should be able to play freely and take part in a range of recreational activities in their communities at times and in places that meet their needs'.⁶¹ The guidance stipulates that a quality play environment 'meets the enjoyment, social and developmental needs' of children, and that a 'rich play environment is one which is flexible, adaptable, varied and interesting', maximising 'the potential for socialising, creativity, resourcefulness, challenge and choice'.⁶² Such space is to be 'a trusted public space where children feel free to play in their own way, in their own time, on their own terms'.⁶³ Quality play provisions offer children 'the opportunity to freely interact with or experience' a number of stimulus including the natural world, other children, loose parts and challenge and uncertainty.⁶⁴ Having provided explanation of the scope of 'quality' and 'quantity' under the Play Sufficiency Duty, it adds that children need time, space and permission for play, with acknowledgment by adults that 'this is every child's right'.⁶⁵

Northern Ireland

The Northern Ireland Assembly has not directly incorporated the CRC into devolved law. Northern Ireland has enacted the Children's Services Co-operation Act (Northern Ireland) 2015. This legislation is 'the most significant legislative development relating to children in Northern Ireland in recent years',⁶⁶ and was influenced by the Welsh Measure.⁶⁷ The Co-

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid 16-17

⁶⁵ Ibid 17

⁶⁶ NICCY, 'Statement on Children's Rights in Northern Ireland', (NICCY, June 2018) 13 <<https://www.niccy.org/media/3051/socrni-main-report-final-june-18.pdf>> accessed December 2019

⁶⁷ O'Loughlin (n30)

operation Act 'provides a statutory framework to improve the wellbeing' of children and young people in Northern Ireland, 'within a rights based context'.⁶⁸ The Act defines wellbeing as including eight elements, the second of which is 'the enjoyment of play and leisure'.⁶⁹ The definition of wellbeing is to be determined with regard to 'any relevant provision' of the CRC, including Article 31, as stipulated by Article 1(4) of the Co-Operation Act.⁷⁰ The Act is significant because of its recognition of the importance of children's play, and the obligation it places on government departments, agencies and local authorities 'to co-operate with each other to contribute to the improvement of the specified wellbeing outcomes'.⁷¹ This includes 'a duty on all key agencies to cooperate in the planning, commissioning and delivery of children's services [and] an enabling power to pool resources to address crosscutting children's issues'.⁷² Whilst this provision recognises the importance of play for children's wellbeing, and points to the CRC for guidance, it does not refer explicitly to a *right* to play, nor is the cross-cutting duty as explicit or as powerful as that provided in the Welsh Measure. The significance of the legislation was made clear by O'Loughlin who saw it as providing opportunity for increased realisation of the right to play in Northern Ireland.⁷³

Scotland

Scotland's Children and Young People (Scotland) Act 2014 (asp 8) provides some protection for Convention rights in devolved law. This legislation places a duty on Scottish Ministers to consider and take 'any steps which would or

⁶⁸ NICCY (n66) 13; S 1(1) of the Act

⁶⁹ S 1(2(b))

⁷⁰ S 1(4)

⁷¹ NICCY (n66) 13

⁷² Ibid

⁷³ O'Loughlin (n30)

might secure better or further effect in Scotland of the UNCRC'.⁷⁴ It requires Ministers to report, every 3 years, on any such steps taken or planned.⁷⁵ Whilst this Act does offer some limited protection for the right to play, the Scottish Government has committed to directly and fully incorporate the CRC.⁷⁶

Scotland has committed to the realisation of the right to play through its Play Strategy. The 2013 strategy recognises the importance and value of the right to play, both for the individual and the wider 'wellbeing' of Scotland as a whole.⁷⁷ The Ministerial Foreword to the Strategy expresses the government's commitment to take steps to realise the right to play stating:

Our role as parents and carers is to enable and facilitate play. As policymakers, planners and practitioners it is to ensure play is embedded at the heart of our decision making throughout our society and to provide the catalyst for cultural change.⁷⁸

This demonstrates a holistic approach to the right to play, supported by the text of the Strategy itself. The Play Strategy evidences commitment to support realisation of the right to play in the home, in nursery and school settings, and in the community. It acknowledges the importance of, and commits to developing, a supporting environment for play.⁷⁹ This holistic approach demonstrates that the Strategy was 'built on the views of children and young people, parents and carers, the play sector and others involved

⁷⁴ S 1(1)

⁷⁵ S 1(4)

⁷⁶ Discussion on Scottish incorporation of the Convention has been influenced by practice in Wales. See: Together Scotland, *UNCRC Incorporation Advisory Group Meeting Notes 26/10/2018* (26 October 2018) <https://www.togetherscotland.org.uk/media/1201/crc_minutes-21118.pdf> accessed March 2020

⁷⁷ Scottish Government, *Play Strategy for Scotland: Our Action Plan*, (2013) 6 <<https://www2.gov.scot/Resource/0042/00425722.pdf>> accessed March 2020

⁷⁸ Ibid 5

⁷⁹ Ibid 23

in [children's] wellbeing'.⁸⁰ The legislative framework shows that whilst Scotland has not yet incorporated the CRC, nor has an explicit provision in national law that protects the right to play, there is a desire to protect and legislate for the right to play.

Concluding Observations

The Committee made no reference to the right to play in the first two Concluding Observations on the UK.⁸¹ The Committee increased its engagement with play in subsequent Concluding Observations for the UK. It has praised progress in policy and legislation, and criticised the closure of play spaces, the risks of ASBOs and poor play infrastructure for disabled children.⁸² In its joint third and fourth Concluding Observation the Committee stated that the rights to play and leisure are 'fully enjoyed by all children' in Wales.⁸³ In its most recent Concluding Observation, the Committee emphasised the application of Article 12 when designing play 'laws, policies, programmes and services'.⁸⁴ It praised Wales for systematically integrating play throughout policy and legislation, including adopting play specific policy and legislation. It criticised underfunding across the UK, regression in play policies, and a lack of play facilities, particularly for disabled, marginalized and disadvantaged children.⁸⁵ The Committee recommended measures to correct this and to involve children in the planning, design and monitoring of play policies and activities.⁸⁶

⁸⁰ Ibid 5

⁸¹ ComRC, 'Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland' (15 February 1995) CRC/C/15/Add.34; ComRC, 'Concluding observations: United Kingdom of Great Britain and Northern Ireland' (9 October 2002) CRC/C/15/Add.188

⁸² ComRC, 'Concluding Observations: United Kingdom of Great Britain and Northern Ireland' (20 October 2008) CRC/C/GBR/CO/4 paras.68, 69, 52(b)

⁸³ Ibid para.68

⁸⁴ ComRC, 'Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (12 July 2016) CRC/C/GBR/CO/5 para.31(a)

⁸⁵ Ibid para.74(a) and (b)

⁸⁶ Ibid para.75

2.1.2. Legal Framework for the Right to Play in Tanzania

The United Republic of Tanzania ratified the Convention on 10th June 1991. The United Republic of Tanzania has a similar governing system to the United Kingdom, a system inherited from its colonial history, in three ways. It is dualist.⁸⁷ As for the UK, ratification of an international human rights treaty does not make the treaty directly enforceable in domestic law or courts.⁸⁸ In addition to membership of the United Nations, both Tanzania and the UK are members of regional human rights institutions. The United Republic of Tanzania is a member of the African Union and a signatory to its African Charter on the Rights and Welfare of the Child which includes a right to play provision under Article 12(1).⁸⁹ The United Republic of Tanzania operates under a system of devolution.⁹⁰

There is some disagreement as to whether the United Republic of Tanzania should be defined as a federal state, a quasi-federal state, a democratic unitary republic, a semi-unitary state, a supra-national entity or *sui generis*.⁹¹ Within the Union, Zanzibar maintains a degree of sovereignty and autonomy, having its own Constitution.⁹² The Union Constitution 'applies

⁸⁷ Korenica and Doli (n42); Starke (n42); Verdier and Verseeg (n42); Malanczuk and Akehurst (n42)

⁸⁸ For the discussion on the difficulties of incorporation of treaties in domestic law, AO Adede, 'Constitutionalism, Culture and Tradition: African Experiences on the Incorporation of Treaties into Domestic Law' [1999] 7 *AfrYIL* 239, 245

⁸⁹ 'State Parties shall 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'

⁹⁰ B Nyanduga et al., 'UPDATE: Guide to Tanzanian Legal System and Legal Research', *Hauser Global Law School Program* (NYU Law, 2016) <<http://www.nyulawglobal.org/globalex/Tanzania1.html>> accessed January 2018

⁹¹ Commonwealth Local Government Forum, 'Tanzania' (*Commonwealth Local Government Forum*) <<http://www.clgf.org.uk/regions/clgf-east-africa/tanzania>> accessed January 2018; D Mukangara, 'Tanzania' [2005] 12 *SAJIA* 183, 183; I Shivji, *The legal foundations of the union in Tanzania's Union and Zanzibar Constitutions* (DUP, 1990); J Bing 'Tanzania: Legal Information Systems and Regulatory Management', [1995] 3 *IntJLawInfoTech* 1, 8; R Sankore et al., *Zanzibar: democracy on shaky foundations*, (Article 19: The Global Campaign for Free Expression: 2000) 6

<<https://www.Article19.org/data/files/pdfs/publications/tanzania-zanzibar-democracy-on-shaky-foundatio.pdf>> accessed March 2020; Nyanduga et al. (n90); G Mwakikagile, *The Union of Tanganyika and Zanzibar: Product of the Cold War?* (New Africa Press, 2008) 7

⁹² Bing (n91) 5

across the entire country, including Zanzibar', and the two constitutions outline the structure of government.⁹³ There are two parliaments: one for Zanzibar and another that covers both mainland Tanzania and the Union as a whole.⁹⁴ Legislative power over 'Union Matters and... all other matters concerning Mainland Tanzania' is held in the national parliament.⁹⁵ Legislative powers for non-union matters related to Zanzibar rest with the Zanzibar House of Representatives.⁹⁶

The Constitution stipulates a list of 'Union Matters' including foreign affairs, defence, policing, immigration and citizenship.⁹⁷ All other matters are devolved.⁹⁸ This list does not cover children's rights or other legislative and policy issues related to children, meaning these are devolved issues.⁹⁹ To incorporate the Convention into national law, legislation must be passed by both the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.¹⁰⁰ The Constitution of the United Republic of Tanzania requires that any laws 'passed by the parliament of the United Republic on any matter shall [not] be applicable in Zanzibar unless it... expressly provides that it will be applicable in Mainland Tanzania as well as Tanzania Zanzibar... it changes, amends or revokes a law [previously applicable to Zanzibar]... or that law is on union matters'.¹⁰¹

Zanzibar incorporated a Bill of Rights into its Constitution in 1984.¹⁰² This includes fourteen specific provisions outlining rights and freedoms of the

⁹³ Sankore et al. (n91) 5

⁹⁴ Bing (n91) 8

⁹⁵ Constitution of the United Republic of Tanzania (last amended 1985) 1977, Article 64

⁹⁶ Ibid

⁹⁷ Ibid First Schedule

⁹⁸ Ibid

⁹⁹ This is stated with the caveat that all issues relate in some way or another to children.

¹⁰⁰ Constitution of the United Republic of Tanzania (n95) Article 4(2)

¹⁰¹ PJ Kabudi, 'The United Republic of Tanzania after a Quarter of a Century: A Legal Appraisal of the State of the Union of Tanganyika and Zanzibar' [1993] 5 *AfrJInt&CompL* 310, 336

¹⁰² Sankore et al. (n91) 19

Zanzibari people,¹⁰³ two provisions specifying duties of the people,¹⁰⁴ one provision on the limitations to the rights and freedoms,¹⁰⁵ and one provision providing for access to judicial remedy in cases of a breach of rights and freedoms upheld in the Constitution of Zanzibar.¹⁰⁶ It is thought that the introduction of the Bill of Rights in the Constitution of Zanzibar prompted a similar move in the Constitution of the United Republic of Tanzania, in 1985.¹⁰⁷ Many rights included in the Bill of Rights were originally found in the preamble to the Constitution, but a lack of legal force required moving the Bill of Rights into the full text of the Constitution.¹⁰⁸ Chapter 1 of the Constitution contains fourteen provisions outlining rights and freedoms of Tanzanians, grouped together under: the right to equality, the right to life, the right to freedom of conscience, and the right to work.¹⁰⁹ It includes four provisions stipulating the duties of the individual to society, two general provisions including one providing for limitations on the rights and freedoms of the individual, and two provisions outlining derogations and the ability of the state to proclaim a state of emergency.¹¹⁰

None of the rights specified in the Constitutions is child-specific, although they do include children in their remit. There is no mention of children in the Constitution of the United Republic of Tanzania, and only one mention in the Constitution of Zanzibar.¹¹¹ There is no right to rest, leisure, recreational activities or play found in either constitution. An analysis of 45 pieces of legislation throughout the United Republic of Tanzania shows that elements

¹⁰³ Constitution of Zanzibar [R.E.2006] Articles 7, 11-21, 25

¹⁰⁴ Ibid Articles 22,23

¹⁰⁵ Ibid Article 24

¹⁰⁶ Ibid Article 25A

¹⁰⁷ Sankore et al. (n91) 19

¹⁰⁸ G Goldstein, 'The Legal System and Wildlife Conservation: History and the Law's Effect on Indigenous People and Community Conservation in Tanzania', 17 *GeoInt/Envtl/LLRev* 481, 490

¹⁰⁹ Constitution of the United Republic of Tanzania (n95) Articles 11-24

¹¹⁰ Ibid Articles 25-32

¹¹¹ Constitution of Zanzibar (n103) Article 10(7) stipulates that the government of Zanzibar has responsibility to ensure that children are assisted in access to work.

of the right to play have been included in multiple pieces of legislation throughout the state.¹¹²

The key legislation protecting the right to play in Tanzania is the 2009 Law of the Child Act, and in Zanzibar the 2011 Zanzibar Children Act. Tanzania's Law of the Child Act, passed just prior to the 20th anniversary of the CRC, makes explicit reference to the right to play in Article 8(1(g)). This places responsibility for the right on parents, stating that it is their 'duty' to 'give' children this right. This raises questions about the state's responsibility and the requirements that can be placed on it to realise the right to play under national law.

The Law of the Child Act 2009 does strengthen this right by providing that '[i]t shall be the duty of any member of the community who has evidence or information that a child's rights are being infringed or that a parent, a guardian or relative having custody of a child who is able to, but refuses or neglects to provide the child with... right to play (*sic*)... to report the matter to the local government authority of the area'.¹¹³ This hints at a wider state

¹¹² Legislation analysed with no reference to play: The Law of the Child (Child Employment) Regulation 2012; Children's Homes Act (Regulation) 1968; The Law of the Child Act (Foster Care Placement) Regulation 2012; Adoption of Children Act 1995; The Day Care Centres Act 1981; Penal Code 1945; Act to Amend the Penal Code 1962; The Anti-Trafficking in Persons Act 2008; The Sexual Offences Special Provisions Act 1998; Births and Death Registration Act 1920; The Registration and Identification of Persons Act 1986; An Act to Amend the Criminal Procedure Code 1969; An Act to Amend the Criminal Procedure Act 1985; The Evidence Act 1967; Evidence (Amendment) Act 1980; Employment Ordinance (Amendment) Act 1975; Local Customary Law (Declaration) Order 1963; Law of Marriage Act 1971; Age of Majority (Citizenship Laws) 1970; National Service Act 1964; National Service (Amendment) Act 1974; National Service (Amendment) Act 1982; Widows and Orphans Pensions (Cesser of Eligibility to Contribute) Act 1962; Islamic Law (Restatement) Act 1964; Disabled Persons (Employment) Act 1982; Disabled Persons (Care and Maintenance) Act 1982; Institute of Education Act 1975; National Education Act 1978; Commission for Human Rights and Good Governance Act 2001; Penal Decree Act 2004; Education (Amendment) Act 1995; Zanzibar Aids Commission Act 2002; Zanzibar Adoption of Children Decree 1951.

Legislation that references play, discussed further below: Law of the Child Act 2009, Articles 8(1)(g), 16(g) and (h), 95(1); The Law of the Child (Retention Homes) Rules 2012 Article 4(1)(j); Persons with Disabilities Act 2010 Articles 21(1), 48(2), 52(e); Zanzibar Children Act 2011 Article 10(7); Day Care Centre Regulations 1982 Articles 9(b), 10(1).

Legislation that does not refer to play but refers to related rights (e.g. recreation, leisure, rest etc.): The Refugee Act 1998 Article 31; Zanzibar Labour Act 1997 Article 11(a), 65(1), 66; Employment and Labour Relations Act 2004 Articles 24 and 30(1)(a); Law of the Child (Apprenticeship) Act 2012 Articles 5(4)(c), 10(8), 15.

¹¹³ (Act No.21 of 2009) Article 95(1)

responsibility to challenge parents and carers who are not realising the right to play, but leaves unanswered whether this amounts to additional state responsibility to 'give' children their right to play when parents and carers fail to do so. This final provision reflects that in the subsequent Persons with Disabilities Act, 2010.¹¹⁴ Play is protected in the Law of the Child (Retention Homes) Rules 2012¹¹⁵ and the Day Care Centres Regulations 1982.¹¹⁶

The interview with Guga provided a valuable insight into the drafting process of the 2009 Law of the Child Act. The TCRF 'emerged from' 'an informal coalition' of civil society organisations, engaging in the process leading up to the enactment of the Act.¹¹⁷ The group, with UNICEF,¹¹⁸ had been involved in drafting the Act, and that they had 'won the trust' of government ministers 'by guaranteeing confidentiality and partnership'.¹¹⁹ He described how the coalition had 'worked day and night proposing Articles and giving argument and justification as to why it should be included'.¹²⁰ This 'is why the LCA 2009 looks very different from many other laws'.¹²¹ In pushing for the inclusion of specific Articles, the coalition was able to lean on 'the fact that the State party has signed the conventions', and made the argument that 'translating it into legal framework (*sic*)' would be 'an added advantage'.¹²²

¹¹⁴ (Act No.9 of 2010) Article 21(1) places a duty on 'any member of the community who has evidence or information that rights of a child with disabilities are being infringed or that a parent, guardian or relative having custody of a person with disabilities who is able to, but refuses or neglects to provide the right to play... to report the matter'. Article 52(e) places a requirement on the relevant Government Minister to 'ensure that children with disabilities have equal access to participate in play, recreation, leisure and other sports activities', and Article 48 stipulates a requirement for architects and others involved in planning and design to design playgrounds that are inclusive for those with disabilities.

¹¹⁵ Article 4(1) states that 'Every child who has been remanded by a court order in a Retention Home shall have the right to... (j) a suitable amount of time for daily free leisure, exercise and play'.

¹¹⁶ Article 9(b); Article 10(1)

¹¹⁷ Interview with Eric Guga, Skype, 27th February 2018

¹¹⁸ S Cameron, 'Tanzania passes landmark Law of the Child' (*UNICEF*, 6th November 2009) <https://www.unicef.org/policyanalysis/tanzania_51662.html> accessed December 2019

¹¹⁹ Guga (n117)

¹²⁰ Ibid

¹²¹ Ibid

¹²² Ibid

With regards to the right to play, the coalition sought to use 'the law to generate the sense of responsibility legally to provide for standards in child care and maintenance [that they] did not want to assume' would be provided for. By including the right to play in this way 'any proceedings with regards to cases related to maintenance and care of the child' would be able to 'question whether the child was being provided the right to play, an important element for growth'.¹²³ This demonstrates the importance of civil society and child rights advocacy in drafting legislation to protect children's rights, and the significant impact they can have in child rights realisation. UNICEF praised this as a 'landmark legislation' and 'a huge step forward', describing it as reflecting 'many of the most serious challenges facing children in Tanzania' and holding great potential for effective implementation due to the 'tremendous solidarity' across all parties working on the legislation.¹²⁴

Zanzibar protects the right to play in the context of rights relating to living conditions, with Article 10(7) of the Zanzibar Children's Act stating:

The parent, guardian or care-giver of a child and any other authority or institution which has a duty or duties towards a child in particular or children in general shall take all appropriate measures within their means to support the child's right to participate in play, sports, cultural and artistic activities and other constructive leisure activities which are relevant to his age¹²⁵

This provision places a duty for the realisation of the right on parents. It broadens to include 'any other authority or institution which has a duty or

¹²³ Ibid

¹²⁴ Cameron (n118)

¹²⁵ Article 10(7)

duties towards a child... or children in general'. This places the scope of responsibility widely, covering the government and its departments. The Zanzibar Children's Act was awarded the 2015 Future Policy Award on securing children's rights and has been described as an 'outstanding piece of legislation',¹²⁶ and 'comprehensive' children's rights act.¹²⁷

The United Republic of Tanzania's, *Consolidated 2nd, 3rd And 4th Reports On The Implementation Of The African Charter On The Rights And Welfare Of The Child* provides more information on the interpretation of the legislation. They explain that '[i]n case of need to provide material assistance and support programmes, the State party has a duty to safeguard and promote the welfare of the child within its area of jurisdiction', and that this is so under both the Tanzania Law of the Child Act and the Zanzibar Children's Act.¹²⁸ Two State party Reports have been submitted to the African Committee to date, along with one Concluding Observation. The first Report makes brief reference to playgrounds, and includes a report of a consultation conducted with 34 children across eight district and 'from diverse socio-economic backgrounds'¹²⁹ that explicitly references the right to play and challenges in its realisation and enjoyment. None of these were

¹²⁶ UNICEF, 'Pioneering child rights legislation from Zanzibar wins distinguished international award' (UNICEF, 21 October 2015) <<https://www.unicef.org/tanzania/press-releases/pioneering-child-rights-legislation-zanzibar-wins-distinguished-international-award>>accessed December 2019

¹²⁷ S Keenan, 'Children's Act provides new tools for protecting child rights in Zanzibar' (UNICEF, 25 August 2011) <https://www.unicef.org/protection/tanzania_59658.html>accessed December 2019

¹²⁸ The United Republic of Tanzania, 'Consolidated 2nd, 3rd And 4th Reports On The Implementation Of The African Charter On The Rights And Welfare Of The Child By The Government Of The United Republic Of Tanzania', Submitted to the African Committee of Experts on the Rights and Welfare of the Child (October 2015) para.84

¹²⁹ The United Republic of Tanzania, 'Initial Tanzania Report to the African Committee of Experts on the African Charter on the Rights and Welfare of the Child', Submitted to the African Committee of Experts on the Rights and Welfare of the Child (December 2006) 86

taken up by the African Committee in its Concluding Observation.¹³⁰ The second Report makes no reference to play.¹³¹

The Committee on the Rights of the Child has failed to mention the right to play in Concluding Observations on Tanzania, despite references to play made in State party Reports.¹³² This is significant as it evidences a lack of support by the Committee for the right to play, even when submissions include direct references to play.

2.2. Political and Community Support

Without support, the implementation of human rights simply will not occur. Political will is a 'necessary' condition for the protection of the rights of the child.¹³³ Interviewees took this further from political will to 'buy-in'¹³⁴ from national and local government, the wider community, and parents. This perception was strong throughout the interviews, and forms a central part of the following discussion. This section explores issues relating to political support prior to discussing community support. It addresses the UK and Tanzania together as these were overarching themes for both countries. This avoids repetition and demonstrates the universal nature of the discussion.

¹³⁰ ACERWC, 'Concluding Recommendations By The African Committee Of Experts On The Rights And Welfare Of The Child (ACERWC) On The Republic Of Tanzania Report On The Status Of Implementation Of The African Charter On The Rights And Welfare Of The Child' (14th Session, Ethiopia, 16-19th November 2010)

¹³¹ The United Republic of Tanzania (n132)

¹³² ComRC, 'Consideration of reports submitted by States parties under article 44 of the Convention: United Republic of Tanzania' (4 November 2013) CRC/C/TZA/3-5 para.95 explicitly refers to the right to play; ComRC, 'Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: United Republic of Tanzania' (24 August 2005) CRC/C/70/Add.26 paras.241-245 discuss playgrounds; ComRC, 'Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: United Republic of Tanzania' (25 September 2000) CRC/C/Add.14/Rev.1 para.344 references protection of play space.

¹³³ M Munyae and M Mulinge, 'Implementing the 1989 United Nations' Convention on the Rights of the Child in sub-Saharan Africa: the overlooked socioeconomic and political dilemmas' [2002] 26 *Child Abuse Negl* 1117, 1122

¹³⁴ Hunter-Blair (n32)

2.2.1. Political Support

Turning to political or governmental support, the interviews revealed that politicians may have an attitude toward the right to play as a 'luxury right'.¹³⁵

One statement exemplifies this viewpoint:

There would be many bureaucrats who would think that the right to play is a luxury and therefore not worth policymakers' time. A bit like the narrative around rights back in the day where it was 'rights are all very well if you can survive'. I think this is probably the next evolution... its invisible... the perception is that it's not the business of government and that it's a luxury...¹³⁶

This echoes the concern raised by the Syrian Arab delegation during the drafting process of the Convention.¹³⁷ Other interviewees suggested this exists in a more subtle way, emphasising that the right to play is simply 'not a priority'¹³⁸ and that other issues surpass it with regards to attention from government. For a UK-based participant, 'play has slipped down the pecking order' in terms of policy areas that officials must deliver.¹³⁹ These comments show that attitudes towards children's rights and play must be improved in governments. Viewing the right to play as a luxury raises considerable risk that it will receive little attention, and any existing attention and resources may be reduced when competing priorities arise. Campbell emphasised that the right to play is simply 'not top of the list' when it comes to 'the resources and capacities and infrastructure'.¹⁴⁰

¹³⁵ McAlpine (n25); Campbell (n24); Ibid

¹³⁶ McAlpine (n25)

¹³⁷ Chapter 4 Section 2.2

¹³⁸ Campbell (n24)

¹³⁹ Hunter-Blair (n32)

¹⁴⁰ Campbell (n24)

A sentiment communicated strongly by UK-participants was that this lack of priority may at times stem from a dislike, lack of interest, or apathy towards children's rights in general, and the right to play in particular.¹⁴¹ O'Loughlin argued that the 'government really don't even want to hear the word 'play', never mind actually saying there's a fundamental right', emphasising that this makes it difficult to engage Westminster on play.¹⁴² This lack of interest in the right to play reflects a 'school of thought' that views such rights as 'trivial and inessential'.¹⁴³ Voce comments that the 'strong association with the concerns *of* children – as distinct from concerns *about* children – tend to cause [the right to play] to be viewed as frivolous and unimportant: 'child's play'".¹⁴⁴

This perception was made clear in an anecdote shared by Voce, describing events surrounding a UK Labour Government consultation on children's priorities.¹⁴⁵ During the consultation children emphasised 'seeing friends, having more things to do, places to go, play and recreation' as their biggest priority.¹⁴⁶ Voce revealed that the government 'conflated' two areas of the consultation, play and education to form the policy area 'enjoy and achieve'.¹⁴⁷ There was 'so little' on children's *play* in the policy that ministers referred to 'enjoying school as though that was what the policy was'.¹⁴⁸ Voce described this as 'spin' since the government claimed the policy was reflective of 'the most important' issues to children.¹⁴⁹

¹⁴¹ Hunter-Blair (n32); Voce (n27); O'Loughlin (n30)

¹⁴² O'Loughlin (n30)

¹⁴³ A Voce, *Policy for Play* (Policy Press, 2015) 2

¹⁴⁴ Ibid 2-3

¹⁴⁵ Voce (n27)

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ Ibid

The interview data showed party-political matters to have considerable effect on the realisation of the right to play. Party-political topics were only raised by UK-based participants. This is not to suggest that these issues are not relevant to the situation in Tanzania, rather that the data gathered only highlighted this issue in the UK context. The statements taken as a whole do not suggest a clear party-distinct line in the UK. They show both major parties (and the Liberal Democrats whilst in the Coalition Government) taking measures that hamper the realisation of the right to play or ignoring the right to play. The data demonstrated that approaches to the right to play vary from time-to-time depending on the viewpoint of those in power.

O'Loughlin described the current Conservative Government as having no interest in children's rights, and argued that they had 'taken a retrograde step over the last number of years'.¹⁵⁰ This statement was made in reference to the 2008 Play Strategy England that was overturned by the Conservative and Liberal Democrat Coalition Government.¹⁵¹ O'Loughlin revealed that realisation of the right to play 'waxes and wanes' based on the level of political support available at a given time, stating '[o]ur sense is that if politicians want it to be a big issue, it becomes a big issue'.¹⁵²

The interview data showed that *anti*-child-rights sentiment is particularly detrimental to the realisation of the right to play.¹⁵³ Support for the right depends upon the presence of interested politicians and as changes in government occur there is a risk of reduction in support for the right to play and retrogression in its implementation. The 2008 Play Strategy in England

¹⁵⁰ O'Loughlin (n30)

¹⁵¹ DCSF, DCMS and Play4Life, *The Play Strategy* (2008)

<<https://lx.iriss.org.uk/sites/default/files/resources/The%20Play%20Strategy.pdf>> accessed March 2020

¹⁵² O'Loughlin (n30)

¹⁵³ Hunter-Blair (n32); Voce (n27); and O'Loughlin (n30)

highlights the need to ensure a strong response by the Committee in challenging governments that regress in their implementation, and greater understanding and support for the right to play across political parties. Legislative protection would diminish opportunities for such regression.

McAlpine claimed that 'it's very hard for policymakers to see what they can be doing to enhance the right to play', referring to the 'intangible' nature of play as a key reason for this alongside a lack of specialist child development knowledge by those writing policies.¹⁵⁴ Hunter-Blair described politicians desiring a 'measurable, achievable, tick-boxable' target.¹⁵⁵ This highlights the need for politicians to have greater understanding of what the right to play requires, and to address the ambiguity surrounding the concept of play itself.¹⁵⁶ This points to one clear reason for governments resistance toward the right to play: a lack of understanding.

The data indicated a belief that the right to play sits in the domestic domain and is not government responsibility. McAlpine suggested that implementation of the right requires 'the government to have a position on the domestic domain' but described government reluctance to do so.¹⁵⁷ She explained that the Tanzanian government's 'position on many issues' places responsibility on the family, stating that their involvement 'won't really intrude any further' than such an assertion.¹⁵⁸ In her view this led to a situation with no government 'position' on play, declaring 'you're just at an impasse... at that point'.¹⁵⁹ This demonstrates a practical divide between the public and the private in the context of policy, having significant implications

¹⁵⁴ McAlpine (n25)

¹⁵⁵ Hunter-Blair (n32)

¹⁵⁶ Ibid

¹⁵⁷ McAlpine (n25)

¹⁵⁸ Ibid

¹⁵⁹ Ibid

for the realisation of the right to play. McAlpine described this as resulting in a situation with no 'tools or social safety nets or guidance or services that would enable families to be more responsible'.¹⁶⁰ This has significant implications for the implementation and impact of Article 18 UNCRC, its relationship to Article 31, and the nature of the steps required by states to realise these rights.¹⁶¹ Voce shared similar concerns in the UK context.¹⁶²

Another reason for governments' resistance towards implementing the right to play is that the right is 'not seen as a public good'.¹⁶³ Interviewees state that appropriate understanding of the importance and impact of the right to play could be key to overcoming other barriers to its implementation. Voce described some challenges in the lack of understanding of the right to play's public good, whilst discussing the differences between sport and play. He emphasised the intrinsic value of play – 'playing isn't to do anything. Playing isn't to achieve anything. Playing is to be enjoyed, that's all play is for. Play is for the enjoyment of playing' – and argued that this is 'overlooked because it's immediate'.¹⁶⁴ Voce acknowledged that play has benefits – noting educational attainment, physical fitness, better sleep and healthier appetites – but argued that this is 'not why it's engaged'.¹⁶⁵ Voce explained that 'all our policy, all of our politics if you like is geared towards your future direction'.¹⁶⁶ For him 'sport gets hugely disproportionate attention and investment compared to play', arguing that this 'mirrors the values of our politics and our culture and our civilisation...'.¹⁶⁷ This reflects Chapter 2 on the importance of play, and a deep misunderstanding of the right to play

¹⁶⁰ Ibid

¹⁶¹ Discussed in Chapter 5

¹⁶² Voce (n27)

¹⁶³ McAlpine (n25)

¹⁶⁴ Voce (n27)

¹⁶⁵ Ibid

¹⁶⁶ Ibid

¹⁶⁷ Ibid

amongst government and politicians, likely stemming from a lack of awareness. Such misunderstandings risk a 'postcode lottery' in implementation and realisation of the right.¹⁶⁸

Several participants highlighted positive attitudes towards children's rights and the right to play. Mannello described a strong belief within the Welsh Government of 'the importance of play in children's lives and the benefits it gives to their health, happiness and wellbeing', and claimed that it 'is taking a global lead on legislating for play opportunities for children'.¹⁶⁹ This reflects the fact that the Welsh Government was the first worldwide to introduce a Play Sufficiency Duty.¹⁷⁰ Hunter-Blair described PlayScotland as having 'strong Ministerial support' from both current and previous ministers.¹⁷¹ Similar descriptions were shown relating to the Tanzanian government. Campbell shared that there was broad governmental support for the right to play,¹⁷² and Stewart described the involvement of Ministers in supporting their work in local communities.¹⁷³ Campbell highlighted challenges facing implementation in Tanzania due to its status as 'one of the poorest countries'.¹⁷⁴ He explained that implementation remains a challenge due to 'resources[,] capacities and infrastructure', as well as prioritisation, leading to a need for specialist NGOs to carry the weight of implementation.¹⁷⁵

A principal thread running through interviews was a lack of understanding of the right to play within government. A full understanding of the right to play, what it offers children and society, and how to implement it would overcome many of the issues outlined. McAlpine suggested that the right to

¹⁶⁸ Hunter-Blair (n32)

¹⁶⁹ Interview with Marianne Mannello, Phone/Email, 22 March 2018

¹⁷⁰ Section 2.1.1

¹⁷¹ Hunter-Blair (n32)

¹⁷² Campbell (n24)

¹⁷³ Stewart (n31)

¹⁷⁴ Campbell (n24)

¹⁷⁵ Ibid

play must be integrated 'into the understanding of what children need to achieve their potential'.¹⁷⁶ She recommended highlighting that children will not 'get the neurological development and the social development that [children] need to make the most of other investments, particularly education', without play, claiming this as a potentially strong argument to make to 'policymakers'.¹⁷⁷ Hunter-Blair argued that whilst 'cultural change' is necessary for implementation of the right, a policy framework is required 'to allow that to happen'.¹⁷⁸

Many participants gave recommendations for how this could happen, providing examples of how they had successfully achieved support for the right to play. The main themes arising from the data were: leadership, language, and working with NGOs. Leadership was highlighted as a necessary part of a required 'top down, bottom up' approach to the realisation of the right to play, as 'it won't happen unless someone is committed to it or dedicated to it'.¹⁷⁹ Hunter-Blair suggested that greater use could be made of the position of Children's Commissioners in the UK and that this 'would make it a lot easier' to advocate for and realise the right to play.¹⁸⁰ Participants criticised a lack of leadership and support for the right by the Commissioners, with 'missed opportunities', feelings of extreme disappointment, and suggestions that Commissioners may find play 'very difficult to engage with' as a topic.¹⁸¹ The lack of a single minister [in England] with children's play in their policy portfolio was a point of frustration.¹⁸²

¹⁷⁶ McAlpine (n25)

¹⁷⁷ Ibid; Hunter Blair (n31)

¹⁷⁸ Hunter Blair (n31)

¹⁷⁹ O'Loughlin (n30)

¹⁸⁰ Hunter-Blair (n32)

¹⁸¹ Ibid; O'Loughlin (n30)

¹⁸² Voce (n27)

I contacted the Department for Culture, Media and Sport (DCMS), the Department for Communities and Local Government (DCLG) and the Department for Education for information on the implementation of the right to play. The DCMS and DCLG both directed me to the Department for Education, with the former stating that 'this subject is better suited to the department for education'.¹⁸³ This highlights some of the difficulties in implementing the right to play, and conflating it with education. It would be expected that the DCMS and DCLG would have significant relevance to the implementation of the right to play.

According to Hunter-Blair, in order for realisation of the right to play to not 'wax and wane' dependant on political preference, children's play must be recognised as 'bigger than politics'.¹⁸⁴ She suggested instead that play be viewed as 'about children's health and wellbeing, it's about children's rights, about children's opportunities, investing in a healthier children's population, doing the right thing'.¹⁸⁵ She called for an approach that keeps play 'apart' from politics, with 'generic buy-in'.¹⁸⁶ The practical realities of this are challenging, with politics driving government funding and policy changes. It was argued that 'practical projects' are necessary to make a difference. These require funding, and funding is political. Rather than separating children's play from politics, political engagement is vital to its realisation and should be encouraged. The impact of this approach has been visible in the Welsh context. The Welsh Play Sufficiency Lead stated that '[t]he Play Sufficiency Duty didn't make things easier ... but it did radically change the way we went about the work. It dramatically changed the way we talked

¹⁸³ Email communication dated 24 August 2017

¹⁸⁴ Hunter-Blair (n32)

¹⁸⁵ Ibid

¹⁸⁶ Ibid

about children and their play'.¹⁸⁷ There is significant value in high-level support for the right to play, and of legislative grounding for the right. NGOs can lobby government ministers and politicians to secure commitments to the realisation of the right to play.

Participants shared examples of situations where leadership and support has been achieved. Hunter-Blair described the process of developing a 'bank of Play Champions' from a broad spectrum of political backgrounds in Scotland to support, advocate for and champion the right to play in the media and in parliament.¹⁸⁸ The value of this was in providing a network of MSPs that PlayScotland can readily engage with and encourage to act.¹⁸⁹ Hunter-Blair acknowledged the importance of NGO work in this area. Often NGOs are placed in positions where they can provide high-level and ground-level support to the realisation of the right to play, through keeping politicians to account, lobbying, producing resources to support parents, politicians and others in the realisation of the right to play, or through assisting in the provision of play interventions.¹⁹⁰ These organisations may 'sit, as a national organisation, with the big picture as to actually identify where the gaps are and then [can] move in to try and plug those gaps'.¹⁹¹ Another source of leadership is provided by the Committee on the Rights of the Child and despite the limited powers of the Committee in enforcing the right to play, the Committee can be 'an additional lever when [NGOs are] trying to achieve things'.¹⁹² To ensure the greatest conditions for the realisation of the right

¹⁸⁷ W Russell et al., *Children's Right to Play in Wales: Six years of stories and change since the commencement of the Welsh Play Sufficiency Duty: Summary Report*, (Play Wales, 2019) 1

¹⁸⁸ Hunter-Blair (n32)

¹⁸⁹ Ibid

¹⁹⁰ All interviewees shared examples of work that they do to realise the right to play

¹⁹¹ Hunter-Blair (n32)

¹⁹² Ibid

to play there must be high-level *political* support: 'it has to be acknowledged at a very high level in government'.¹⁹³

This leads to the final recommendation for garnering political support – the use of language, or mapping. Stewart claimed that there is scope for greater and more *directed* use of evidence of the importance of play for children to garner support.¹⁹⁴ He argued for greater emphasis on long term benefits of play as it would better 'legitimise [play] as beneficial and get more government attention'.¹⁹⁵ Advocacy should not focus solely on early-years and should show what the right to play offers long-term for individuals and society as a whole, and a need for more focused and well distributed research, with the impact of research on policy described as 'crucial'.¹⁹⁶ Stewart claimed a long-term focus, and appropriate use of advocacy and language, provides greater opportunity for governments and donors to justify funding allocations.¹⁹⁷

O'Loughlin stated that, whilst 'challenging', PlayboardNI tailor their language to their audience to 'play the game'.¹⁹⁸ This includes aligning their canvassing 'to a particular cause', which can vary across governmental departments.¹⁹⁹ O'Loughlin highlighted that this can be beneficial as it 'gets us in through the door... then we're able to affect change and really clarify what we mean'.²⁰⁰ She described their most effective area advocating for the right to play with the health department on the obesity taskforce.²⁰¹ A

¹⁹³ Ibid

¹⁹⁴ Stewart (n31)

¹⁹⁵ Ibid

¹⁹⁶ J Young, 'Research, Policy and Practice: Why Developing Countries are Different' [2005] 17 *JIntDev* 727, 727

¹⁹⁷ Stewart (n31)

¹⁹⁸ O'Loughlin (n30)

¹⁹⁹ Ibid

²⁰⁰ Ibid

²⁰¹ Ibid

similar approach was described by Hunter-Blair who outlined a double-pronged strategy in Scotland.²⁰²

One example of a policy to which PlayScotland has mapped the right to play is *Getting it Right for Every Child (Scotland)*, aiming to support 'children and young people so that they can grow up feeling loved, safe and respected and can realise their full potential'.²⁰³ This policy has eight wellbeing factors: safe, healthy, achieving, nurtured, active, respected, responsible, included – referred to as the SHANARRI principles. PlayScotland explicitly align their toolkits and advocacy with these principles, mapping 'the key contributions' that play can have in meeting the policy aims.²⁰⁴ Hunter-Blair highlighted that PlayScotland aimed to similarly emphasise the relationship of the right to play to children's mental health in the 'consultation on a new ten-year children's mental health and wellbeing strategy'.²⁰⁵ Exercises such as this can have a positive outcome in raising awareness of the right to play and its advantages for children, and in demonstrating how realising the right is in the (local and national) government's interest.

Mapping exercises are not unproblematic. O'Loughlin expressed hesitancy over mapping due to its potential to undermine the intrinsic value of play, stating 'we don't like having to do that because for us we say play is for play's sake and for childhood, it's not because of good health or to beef up a debate that we do that'.²⁰⁶ Voce argued that mapping exercises 'distorts what happens' as, when funding and policy initiatives are not directed at 'children's play for its own sake',²⁰⁷ funding may be redirected to other

²⁰² Hunter-Blair (n32)

²⁰³ Scottish Government, *Getting It Right for Every Child* (Scottish Government) <<https://www.gov.scot/policies/girfec/wellbeing-indicators-shanarri/>> accessed March 2020

²⁰⁴ Hunter-Blair (n32)

²⁰⁵ Ibid

²⁰⁶ O'Loughlin (n30)

²⁰⁷ Voce (n27)

purposes. This does not mean that mapping exercises are not worthwhile but rather that such exercises should be carried out alongside advocacy for the intrinsic value of the right to play, together with careful direction on implementation.

2.2.2. Community Support

Whilst community support is important for the realisation of the right to play, it is not always forthcoming nor easy to obtain. When asked about the greatest challenge to implementing the right to play, participants emphasised 'people's attitudes',²⁰⁸ including parents' attitudes.²⁰⁹ Interview data revealed significant challenges, from a lack of awareness of the value of play to gender biases in expectations of how children spend their time. Lack of awareness and understanding of the importance and nature of play for children underlined many concerns raised by interview participants relating to community support.²¹⁰

When asked what was necessary to realise the right to play, Mannello stated: 'A greater understanding of the importance of play across all sectors, parents and wider community'.²¹¹ Stewart described measures taken to address this. His NGO spends considerable time in 'community engagement', 'showcasing' children's play to help the community 'understand' the short, medium and long term benefits of play.²¹² These methods resemble those used to obtain political support for the right to play – the use of language to map the benefits and importance of play to issues pertinent to the audience, in this case the fact that play 'will benefit [children's] futures'.²¹³ As in relation to

²⁰⁸ Guga (n117)

²⁰⁹ Hunter-Blair (n32); Stewart (n31); Ferla (n39)

²¹⁰ Stewart (n31); McAlpine (n25); Mannello (n169); Hunter-Blair (n32); O'Loughlin (n30)

²¹¹ Mannello (n169)

²¹² Stewart (n31)

²¹³ Ibid

political support, whilst this approach may be beneficial in encouraging community support for the right, it risks undermining the intrinsic value of play and endorsing the perception of children as becomings rather than beings.²¹⁴ To overcome this, an approach that is 'bottom up/top down' that involves 'linking... consistent messages about the importance of play... and the appreciation of play' is necessary.²¹⁵

McAlpine argued that parents do not attribute enough value to play. She described parents reacting to children's play by saying 'they're just playing. It's better that they went and collected water, and went to the house and worked, or carried out their responsibilities', viewing children's play as 'wasting time because they could be doing something more industrious that contributes to the family'.²¹⁶ Similarly, Campbell suggested that a lack of understanding of the importance of play impacts upon a 'hierarchy of needs'.²¹⁷ He stated that 'for a lot of Tanzanians it's just about survival... so whilst [children] will normally naturally play', parents focus on 'access to education and employment'.²¹⁸

The data revealed a lack of community understanding and awareness of children's play, and its importance for children of all ages. McAlpine described a 'knowledge gap' in relation to the importance of attachment for children, and attachment theories.²¹⁹ She suggested this knowledge gap has a direct link to the realisation of the right to play as 'one attaches so often with a child via play [and that] the precondition for secure attachment is connection through play'.²²⁰ O'Loughlin recommended intervention at the

²¹⁴ Section 2.2.1 and Chapter 2

²¹⁵ O'Loughlin (n30)

²¹⁶ McAlpine (n25); This echoes points raised in Chapter 3 Section 5

²¹⁷ Campbell (n24)

²¹⁸ Ibid

²¹⁹ McAlpine (n25)

²²⁰ Ibid

'antenatal' stage to ensure parents receive 'very, very early' and consistent messages regarding play.²²¹ Ferla shared an example of work they do in this area, providing community and home visits to observe and support play and early stimulation.²²²

A knowledge gap of 'what play in the adolescent years looks like' was highlighted by interviewees.²²³ There appears to be a belief that as children get older, play equates to sport.²²⁴ O'Loughlin asserted that 'play doesn't stop when you become a teenager'.²²⁵ Dangers of conflating play with sport have been noted.²²⁶ Hunter-Blair argued that as parents lack information on how to play with or support the play of adolescents, 'the gaming industry has got the alternative at [their] fingertips'.²²⁷ McAlpine stated that 'because of the nature of urban planning particularly, kids are inside and playing with devices and watching TV'.²²⁸ She emphasised that parents may say 'my kids are playing', but now it is a question of the *quality* of the play'.²²⁹ Digital play is a form of play and should be protected as an element of the right to play, however balance is necessary.²³⁰

There is a knowledge gap for what constitutes play, particularly for older children. Awareness-raising on both potential harms of extended screen-time, and the importance and types of alternative play that children could engage in, is necessary. Hunter-Blair reported older generations depicting high levels of anxiety over children's play and awareness of 'seismic changes'

²²¹ O'Loughlin (n30)

²²² Ferla (n39)

²²³ McAlpine (n25); Chapter 3

²²⁴ Campbell (n24); Voce's comments above.

²²⁵ O'Loughlin (n30); Hunter-Blair (n32) suggested this problem arises at the age of eight; Stewart (n31) and Campbell (n24) place great emphasis on sport in their efforts to promote children's play

²²⁶ Chapter 2 Section 5 on physical development and play; Chapter 3 Section 3 on scholarisation of childhood

²²⁷ Hunter-Blair (n32)

²²⁸ McAlpine (n25); Hunter-Blair (n32)

²²⁹ McAlpine (n25) (emphasis added)

²³⁰ Chapter 3 Section 6 discusses challenges posed by technology.

in play experience from previous to current generations.²³¹ These comments show the importance of awareness-raising amongst communities for the realisation of the right to play. If parents are to meet their obligations under Article 5 UNCRC, they must be provided with appropriate information to guide and advise from.²³²

Community support for the right to play is affected by perceptions of children and childhood. This was a strong theme emerging from the data and, within this, three subthemes were most pertinent: children as vulnerable;²³³ children as a nuisance;²³⁴ and children as becomings.²³⁵ These themes have been addressed and the interview data demonstrates their prevalence and impact upon children's experience of the right to play.

The first subtheme – 'children as vulnerable' – emerged strongly from comments relating to risk, and fears of children's safety. O'Loughlin emphasised the prevalence of helicopter parenting and perceptions of children as vulnerable,²³⁶ whilst Mannello highlighted the pervasiveness of a risk-averse culture,²³⁷ which O'Loughlin argued is fuelled by moral panics such as 'stranger danger'.²³⁸ Guga suggested that risk-averse parents 'are denying their children to play as a measure for protection against harm', due to 'increased concern of the risk of abuse children [may] face'.²³⁹ Whilst keeping children from harm is vital, this must be balanced against allowing children autonomy and freedom, particularly concerning the right to play.²⁴⁰

²³¹ Hunter-Blair (n32)

²³² On parental duties and Article 5, Chapter 5

²³³ Chapter 5, especially Sections 3.4.2 and 4

²³⁴ Chapter 3 Section 2.3

²³⁵ Chapter 2

²³⁶ O'Loughlin (n30)

²³⁷ Mannello (n169)

²³⁸ O'Loughlin (n30)

²³⁹ Guga (n117)

²⁴⁰ O'Loughlin (n30) argued for greater autonomy for children

Hunter-Blair shared an anecdote that highlighted the pervasiveness of the perception of children as vulnerable, and generational shifts in approaches towards play.²⁴¹ On being asked about locations in which they played as children, parents reported 'playing outdoors, unsupervised, usually in and around running water, in a barn, in a field, near a viaduct, maybe even near a railway line'.²⁴² Children described indoor and supervised play, 'with the exception of one boy that said it was on his bike outside'.²⁴³ Children responded that they would be 'far too scared' to play as their parents had, suggesting that community/parental perceptions of children as vulnerable have affected children's views of themselves.²⁴⁴

The second subtheme was 'children as a nuisance'. 'Children, particularly older ones and teenagers, are often seen as a nuisance when playing in their communities'.²⁴⁵ O'Loughlin argued that government campaigns fuel this, referring to a campaign on anti-social behaviour that asked 'Is your child playing out in Belfast?' with 'a picture depicting a young boy with a hood up' placed on the side of 'buildings, parks and busses'.²⁴⁶ The explicit reference to children's play in the campaign is particularly pertinent. Such campaigns fuel perceptions of children as nuisances. They support notions that children should not play outdoors or without supervision due to potential risks, reinforcing perceptions of children as vulnerable. The data demonstrate a tendency 'to see children as either being vulnerable or devious. We want to protect them but obviously we want to correct them'.²⁴⁷ They support the

²⁴¹ Hunter-Blair (n32)

²⁴² Ibid

²⁴³ Ibid

²⁴⁴ Ibid

²⁴⁵ Mannello (n169); Chapter 3 Section 2.3

²⁴⁶ O'Loughlin (n30)

²⁴⁷ Ibid

findings in Chapter 3 that perceptions of children as vulnerable or as nuisance present a challenge for the realisation of the right to play.

The final subtheme relates to 'children as becomings'.²⁴⁸ McAlpine stated that current perceptions of childhood are 'oriented towards childhood being a *transitory period* on the road to optimal adulthood, rather than valuing [it as...] a unique period in time'.²⁴⁹ She described childhood as 'task-oriented'.²⁵⁰ The realisation of the right to play for children in the UK and Tanzania is affected by perceptions of childhood as a period of becoming,²⁵¹ and support findings on the scholarisation of childhood.

Perceptions of gender emerged as a key theme from interviews with Tanzania-based participants. It was clear that beliefs around the nature and role of the girl child are a significant hurdle when trying to gain community support for girls' right to play.²⁵² This relates to cultural views of women and girls' roles in 'looking after the home and the family',²⁵³ and being 'under the cosh of familial obligation'.²⁵⁴ Ferla and Campbell stated that boys are expected and enabled to play after school, whilst girls are reprimanded and required to work in the home.²⁵⁵ This echoed a State party Report submitted to the African Committee, noting that the girl child 'is given more chores at home than boys and therefore less leisure or time to play'.²⁵⁶ Stewart argued that another barrier to girls' play in Tanzania is an expectation that they *cannot* play or engage in sport.²⁵⁷ He shared that, through engaging girls in sport in their communities, the NGO is showing that girls are equal to boys.

²⁴⁸ Chapter 2

²⁴⁹ McAlpine (n25)

²⁵⁰ Ibid

²⁵¹ Voce (n27) argued that 'a shift in mind-set' is required

²⁵² Campbell (n24)

²⁵³ Ibid

²⁵⁴ McAlpine (n25)

²⁵⁵ Ferla (n39)

²⁵⁶ The United Republic of Tanzania (n132) 89, and 93

²⁵⁷ Stewart (n31)

Perceptions 'suddenly change. It's like a lightbulb goes off in lots of people's head because they've just never been exposed to it'.²⁵⁸ Working with communities to demonstrate play activities positively affects the realisation of the right to play. Campbell hinted that this may not be sufficient to overcome entrenched barriers to the girl child's right to play.²⁵⁹

Several participants emphasised the need for 'huge seismic shifts' in cultural perceptions of play to realise the right.²⁶⁰ They acknowledged this does not happen on its own, but rather must be supported through interventions.²⁶¹ Stewart gave an example of organising 'a community sports tournament and bring[ing] people together', using sport as a 'hook' to bring people in and showcase their play-oriented work.²⁶² He suggested that 'seeing it first-hand allows people to understand [play]' and that it provides 'access' to information on play, its benefits and its value.²⁶³ Hunter-Blair supported community-level capacity building,²⁶⁴ stating: 'you have to make it easy for people to do the right thing'.²⁶⁵

2.3. Education and Planning

Questions were asked on many different topics including adolescents, budgets, disability, education, gender, migrant communities, planning and poverty. Most responses related to education or planning. This section does not provide a general discussion of the right to education or of urban planning and children's rights. It focuses on these topics in the context of the implementation of the right to play taking each state in turn.

²⁵⁸ Ibid

²⁵⁹ Campbell (n24)

²⁶⁰ O'Loughlin (n30); Voce (n27); Hunter-Blair (n32); Stewart (n31)

²⁶¹ Hunter-Blair (n32)

²⁶² Stewart (n31)

²⁶³ Ibid

²⁶⁴ Ferla (n39) referred to 'building capacity at the community level'

²⁶⁵ Hunter-Blair (n32)

2.3.1. Tanzania: Education

In 2001 the Tanzanian government issued its *Primary Education Development Plan* which outlined its goals to enrol every 7-12-year-old child into education by 2004. The government acknowledged this had the potential to 'overwhelm the education system's resources'.²⁶⁶ It rolled out fee-free and compulsory enrolment in pre-primary education.²⁶⁷ The government reported that pre-primary net enrolment stood at 44.6% in 2017, primary education gross enrolment was near-universal at 96.9% and net enrolment at 84%.²⁶⁸ The 2004 *Secondary Education Development Plan* outlined goals to 'reach 50 percent cohort participation and transition rate from primary to secondary education by 2010'. A 2018 government report stated that Tanzania saw 'more than 70% of the primary school leavers transit to secondary education'.²⁶⁹

The success of enrolment in pre-primary has implications for the realisation of the right to play. 2005 saw the implementation of a 'new pre-primary school syllabus... emphasising active learning through play-like activities'.²⁷⁰ Interviewees emphasised that the pre-primary curriculum makes strong reference to the importance of play and that in doing so, the Tanzanian government 'formalised' and 'legitimised' play within this setting by 'embedding it in the curriculum'.²⁷¹ This includes a 'balance of teacher-led and child-led activity, learning areas which should be resourced with age-appropriate toys and learning resources etc. [and] a recognition that

²⁶⁶ Government of Tanzania, *Primary Education Development Plan 2002-2006*, (2001)

²⁶⁷ Ferla (n39)

²⁶⁸ Government of Tanzania, *Education Sector Development Plan 2016/17 – 2020/21*, (2018) 3

²⁶⁹ Ibid 3

²⁷⁰ L Mtahabwa, 'Early child development and care in Tanzania: challenges for the future' [2009] 179 *EarlyChildDevCare* 55, 61

²⁷¹ Stewart (n31)

learning resources and play materials should really come from local materials'.²⁷²

The Tanzanian government supports schools through capitation grants. These grants are paid monthly, 'on schedule' and 'consistently'.²⁷³ They support schools in their equipment, maintenance, administration, examination fees, and a specified amount should be set aside to cover 'basic equipment for play'.²⁷⁴ Stipulation for a percentage of this fund to be used for play equipment shows 'a clear way that the government is budgeting [for] play'.²⁷⁵ Whilst these grants are 'reliable', the level of capitation poses a considerable challenge. The fund was initially brought in to cover primary education and has since been stretched to include pre-primary. The capitation grant amount has remained the same since it began in 2001, despite the exchange rate more than doubling, meaning that 'it's halved in its purchasing power'.²⁷⁶ Including play in the curriculum and budgeting for play resources within regular and 'reliable' grants, 'should be recognised as a fundamental key step'.²⁷⁷ The quality and accessibility of play provision in these settings is of great importance.

Problems remain. There is an evident strain on resources. The 2008 *Child Development Policy* acknowledges 'an inappropriate ratio of teachers to pupils' in the education system.²⁷⁸ Ferla shared that the changes to pre-primary saw a sudden 'explosion' in numbers:

²⁷² Ferla (n39)

²⁷³ Ibid

²⁷⁴ Ibid

²⁷⁵ Ibid

²⁷⁶ Ibid

²⁷⁷ Ibid

²⁷⁸ Government of Tanzania, *Child Development Policy* (2008) para.23

We're talking from going from 750,000 to 1.5million children in pre-primary in only a sort of three-month period.²⁷⁹

This data is supported by a Brookings report that recounted statistics from 2014 of an average ratio in schools of 1:77,²⁸⁰ emphasising the 'stark' difference 'between non-government and government pre-primary schools, with 1:90 in government schools compared to 1:21 in non-government schools'.²⁸¹ These statistics contextualise interviewee statements that '[p]re-primary schools are overcrowded'²⁸² and 'there's a huge capacity challenge'.²⁸³ Ferla stated that many pre-primary classes have 'a hundred or more children within a class, some of them more extreme, up to 300 or 350 within a class'.²⁸⁴ Out of 60 primary schools in the region of Mwanza that CCF work in, 15 'have more than 200 children in a class'.²⁸⁵ Ferla argued that the statistics do not reflect 'a minority', submitting that 'a significant number of classes... are absolutely crammed with children'.²⁸⁶

This poses a problem for the realisation of the right to play for several reasons, epitomised in the following statement: 'there's not enough teachers; there's not enough schools; there's not enough classrooms; there's not enough classroom space'.²⁸⁷ Overcrowded schools pose a threat to the realisation of the right to play due to stretched resources, including the capitation grant. Overcrowding in schools reduces space-per-pupil for

²⁷⁹ Ferla (n39)

²⁸⁰ It is worth noting that the scope of this refers to the broader education facility, not simply pre-primary.

²⁸¹ K Anderson and R Sayre, *Measuring Early Learning Quality and Outcomes in Tanzania: Institutional Assessment for Integrating Early Childhood Measurement in the Pre-Primary System* (Brookings, 2016) 7, referencing Government of Tanzania, *Basic Education Statistics (BEST)*, 2014

²⁸² Ibid

²⁸³ Ferla (n39)

²⁸⁴ Ibid

²⁸⁵ Ibid

²⁸⁶ Ibid

²⁸⁷ Stewart (n31). The issue of space in schools for play links directly to the topic for Section 2.3.2

play. Ferla shared that '[t]here's virtually no outdoor play area. There's no play equipment but even if there was play equipment you're never going to have play equipment which is going to be suitable for the ratio of children which are enrolled.'²⁸⁸ It was made clear during interviews that the government of Tanzania lacks the resources to assist schools in providing safe environments (for play and education).²⁸⁹ UNICEF reported that '[s]pace formerly used for play and recreation may be taken over for new classrooms'.²⁹⁰ The Ministry of Education and Vocational Training National Basic Education Standards obliges schools to have 'playgrounds and facilities for sports and games', to be assessed by the Ministry and by the Prime Minister's Office.²⁹¹ Stewart stated that 'just having the capital expenditure to [provide safe play space] in the first place is a huge challenge'.²⁹²

Similar findings were reported for day-care centres. Day-care licenses are granted on criteria that include 'conducive playing ground[s] or facilities'.²⁹³ Interview data showed that this is not always reflected in practice. Ferla shared that a 'situation analysis' CCF conducted in 'high-density settings in Dar es Salaam City' found that day-care facilities did not correspond 'with the minimum standards within policy'.²⁹⁴ Instead, rooms were 'crammed with children... with absolutely no outdoor play space or facilities and extremely few toys and equipment'.²⁹⁵ Despite the 'extremely constrained' resource environment, interviewees reported that schools and childcare facilities are working with parents and communities to encourage the

²⁸⁸ Ferla (n39)

²⁸⁹ Stewart (n31); Ibid

²⁹⁰ UNICEF, *Cities and Children: The Challenge of Urbanisation in Tanzania*, (UNICEF, 2012)

64

²⁹¹ Anderson and Sayre (n281) 13

²⁹² Stewart (n31)

²⁹³ Guga (n117)

²⁹⁴ Ferla (n39)

²⁹⁵ Ibid

provision of play tools from home or the natural environment, as a cost-saving exercise.²⁹⁶

A third issue stemming from overcrowding is the ability and availability of teachers trained to support children's play. This was raised several times during interviews, and relates to play for three reasons; the overstretching of resources, the fact that pre-primary teachers are receiving training in how to support play and play-based learning, and the impact of teachers on play in school settings. The latter point relates to perceptions of play and the scholarisation of childhood. Including play in the curriculum will have limited impact if not supported by training.

It's all about translating that theory and putting it into practice, so saying 'the right to play' and putting prominence on it in curriculums is great, but if people don't understand what it is or how it works, or how to make it work then it's probably not going to achieve much benefit²⁹⁷

Ferla shared that there is 'a dearth of qualified caregivers and teachers who really understand how the fundamentals of the importance of play and [how to] have this balance of play and instruction etc., in early learning settings'.²⁹⁸ In practice, it appears that a substantial percentage of teachers are either underqualified, inappropriately qualified or under-experienced.²⁹⁹ The government is taking steps to improve the number of appropriately trained teachers in these settings.³⁰⁰ INGOs support the government by working alongside District Education Officers, the Ministry of Education and

²⁹⁶ Ferla (n39); Stewart (n31)

²⁹⁷ Stewart (n31)

²⁹⁸ Ferla (n39)

²⁹⁹ Ibid; B Wilinski et al., 'Global Vision, Local Reality: Transforming Pre-Primary Teacher Training in Tanzania' [2016] 19 *CICE* 6, 13

³⁰⁰ PN Chonjo, 'The Quality of Education in Tanzanian Primary Schools: An Assessment of Physical Facilities and Teaching Learning Materials' [1994] 1 *UTAFITI* 36, 43

the Tanzania Institute of Teachers to assist the development of the 'training curriculum for [new and...] in-service teachers'.³⁰¹ These, primarily pre-primary, training curricula put play-based approaches into the training methods.³⁰² Despite these measures 'the problem is still far from being solved'³⁰³ due to the sheer number of teachers required to bring ratios in line with targets.

The data showed a perception issue relating to play in education settings. A principal aim of the training curricula is to support an attitude shift toward the use of play in schools, through countering mistrust, misperception and scepticism and increasing understanding, implementation and buy-in for play in schools.³⁰⁴ Such training and adjustments are necessary as 'a teacher who has a positive attitude toward children's play is more likely to nurture play in children'.³⁰⁵ Wilinski et al. argue that although this shift towards play inclusion in training is evident, and 'while policymakers and diploma students alike saw the need for a specialized course of training, the notion of [pre-primary education] PPE teaching as a *profession* ran counter to widespread public perceptions of early-years teaching'.³⁰⁶ This hindered pre-primary teacher recruitment, as students 'faced the challenge of justifying their decision to become a PPE teacher to their families and communities'.³⁰⁷ It appears that this challenge exists for two reasons; a belief 'that teaching young children did not require formal training [as] it is *just* playing with children',³⁰⁸ and a belief that children should attend school, including pre-

³⁰¹ Stewart (n31)

³⁰² Ibid

³⁰³ Chonjo (n300) 43

³⁰⁴ Stewart (n31)

³⁰⁵ TJ Shavega et al., 'Teachers' Perception of Children's Behavioural Adjustment in Tanzanian Preprimary Schools and Their Relationship to Teachers' Cultural Beliefs Regarding Obedience, Cooperation, and Play' [2015] 28 *Infants&YoungChildren* 88, 93

³⁰⁶ Wilinski (n299) 14 (emphasis added)

³⁰⁷ Ibid

³⁰⁸ Ibid 15 (original emphasis)

primary, solely to be educated in academics, or the 3Rs.³⁰⁹ This reintroduces the issue of the scholarisation of childhood.³¹⁰

Play in school settings is not always positively received by parents, with expectations stemming on pre-primary children being 'able to demonstrate pre-literacy skills or even being able to count or do the alphabet... [believing that this is] how time is to be used in a facility rather than playing'.³¹¹ The desire for evidenced development in the 3Rs is acute for both wealthy and 'cash-strapped parents' sending their children to 'private early learning settings or preschools'.³¹² A report by the Centre for Universal Education at the Brookings Institute examined the quality and outcome of early-years' education in Tanzania, asserting that '[p]riorities and expectations for early education need to be aligned'.³¹³ Beliefs such as these are more acutely felt in education settings beyond early-years. Interviewees reported comparatively positive attitudes towards play in early-years' settings due to beliefs about childhood, the focus on early-years in literature on the benefits of play, and donor support of INGO interventions and campaigns.³¹⁴ The importance of donor funding is apparent in development policy research, described as having a 'dramatic influence' and as 'both supportive and pervasive'.³¹⁵

Data suggested that families with children of primary or secondary school age may find it difficult to justify sending children to school rather than work

³⁰⁹ McAlpine (n25); Ferla (n39); and Stewart (n31)

³¹⁰ Chapter 3 Section 3

³¹¹ Ferla (n39)

³¹² Ibid

³¹³ Anderson and Sayre (n281) 13

³¹⁴ McAlpine (n25); Stewart (n31)

³¹⁵ Young (n196) 731

if children are seen playing during the school day.³¹⁶ This is particularly acute for families living below the poverty line.³¹⁷

Downtime for kids is not going to be appealing from a public service perspective. We're not using the national class for kids to have downtime.³¹⁸

This attitude was described as critical for secondary-school-aged children.³¹⁹ Aversion towards children's play and narrow focus on academic achievement in primary and secondary education are thought to have contributed to the removal of physical education classes in the 1990s.³²⁰ Physical education has returned, yet is weak in application.³²¹ Provision of sport and other extracurricular activities are important for secondary schools due to the lack of understanding as to what play looks like for adolescents, the need to justify children's time in schools as not merely 'downtime', and to counter 'resistance to the idea of self-play' for secondary-aged children.³²² Interviewees recounted using sport as 'sneak messaging' when trying to support an adolescents' right to play.³²³

The discrepancy in approach between early-years settings and primary/secondary settings is reflected in Tanzanian policy. The *Child Development Policy* states that children's needs 'differ according to the stages of growth and development', and places play uniquely in the curriculum for children from two- to five-years-old, declaring that these children need 'playing centre facilities to prepare them to grow physically

³¹⁶ Stewart (n31)

³¹⁷ Ibid

³¹⁸ McAlpine (n25)

³¹⁹ Ibid

³²⁰ Ibid; and Campbell (n24)

³²¹ Ibid

³²² McAlpine (n25)

³²³ Stewart (n31); Campbell (n24) emphasised the use of sport with adolescence for play purposes. This is not unproblematic, as is shown throughout this chapter and Chapter 3.

and intellectually'.³²⁴ While the *Rational of the Policy* refers to development for children from the ages of six to thirteen, there is no further mention of play for this age group. This reveals a narrow focus on the 'early stimulation' of children.³²⁵ Conversely, Ferla argued that a focus on early-years may be justifiable as it is a 'gateway to [play] systematically being able to reach the majority of children from all different backgrounds of Tanzania'.³²⁶ There is an 'assumption' that as young children 'develop [play] skills... they will then continue to give children a better chance'.³²⁷

Schools 'cannot be established or issued a licence if they don't have a playing ground'.³²⁸ The provision of space and opportunity for play – whether under the guise of free time, rest or leisure, or explicitly as play – makes access to schools crucial. Interviews revealed significant challenges in access to schools for girls³²⁹ and working children,³³⁰ suggesting a unique vulnerability for these groups in realising their right to play. Research shows that children with HIV,³³¹ refugee children,³³² children in prison environments,³³³ and

³²⁴ Government of Tanzania (n289) para.35

³²⁵ World Bank, *Tanzania: Early Childhood Development*, SABER Country Report (World Bank, 2012)

³²⁶ Ferla (n39)

³²⁷ Stewart (n31)

³²⁸ Guga (n117)

³²⁹ Ferla (n39); Government of Tanzania (n289) para.57; Stewart (n31); TCRF, *Tanzania Child Rights Status Report*, (TCRF, 2013) 59

<<http://www.childrightsforum.org/files/Tanzania%20Child%20Rights%20Forum%20Status%20Report%202013.pdf>>accessed October 2019; A Joshi and I Gaddis (eds.) *Preparing the Next Generation in Tanzania: Challenges and Opportunities in Education*, (World Bank Group, 2015), 32; M Sommer, 'Where the education system and women's bodies collide: The social and health impact of girls' experiences of menstruation and schooling in Tanzania' [2010] 33 *JAdolesc* 521; E Unterhalter et al., 'Girls claiming education rights: Reflections on distribution, empowerment and gender justice in Northern Tanzania and Northern Nigeria' [2013] 33 *IntJEducDev* 566; Human Rights Watch, *"I Had a Dream to Finish School": Barriers to Secondary Education in Tanzania*, (Human Rights Watch, 2017); UNICEF, *Adolescence in Tanzania* (UNICEF, 2011) 8

³³⁰ Ferla (n39)

³³¹ UNICEF (n341) 16-19; Save the Children, *Capturing Children's Views on the Children's Bill 2010: The National Child Consultation Programme in Zanzibar* (Save the Children, 2010) 52-3

³³² K Wilton, 'Making Early Years Education a Priority for Tanzania's Refugee Children', (European Commission, 2015) <https://ec.europa.eu/echo/blog/making-early-years-education-priority-tanzania%E2%80%99s-refugee-children_en>accessed May 2018

³³³ TCRF, *Tanzania CSO's Alternative Report to the 3rd, 4th and 5th Consolidated Report on Tanzania's Implementation of the Convention on the Rights of the Child (2007-2012)*, (TCRF, 2013) 19 (footnote n22) <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/TZA/INT_CRC_NGO_TZA_18029_E.pdf>accessed October 2018

those in alternative care³³⁴ in Tanzania face additional challenges to realising their right to play. Whilst interview participants did not address these groups, further measures are needed to realise the right to play for vulnerable and marginal groups.³³⁵ The unique situation of children in these groups requires further attention through research.

2.3.2. Tanzania: Planning

Having touched already on some issues regarding planning and play in Tanzania (such as playground provision in schools), this section addresses planning in Tanzania in greater depth. The *Child Development Policy* stipulates that '[b]oth the Central and Local Government should ensure that in towns and village development plans, playgrounds for children are set aside'.³³⁶ Guga reported that over 'the last couple of decades there [has been] poor enforcement' of regulations and policies meant to protect and provide space for children's play, leading to 'many playing fields being occupied for other purposes'.³³⁷ The *Child Development Policy* supports this, noting that '[i]n many areas, both rural and urban, no areas have been set aside for children's games and sports; and entertainment'.³³⁸

Tanzania is facing rapid urbanisation. Evidence shows a significant growth in the number of urban areas in Tanzania over the past century with '[t]he number of towns in mainland Tanzania (other than regional capitals) with populations of over 10,000 [increasing] very fast – from none in 1967 to 116 in 2012'.³³⁹ It is projected that 'Tanzania's urban population will have

³³⁴ SOS Children's Villages International, *Assessment Report of the Alternative Care System for Children in Tanzania* (SOS Children's Villages International, 2014) 13

³³⁵ Chapter 5 discusses principles of non-discrimination

³³⁶ Government of Tanzania (n289) para.46

³³⁷ Guga (n117)

³³⁸ Government of Tanzania (n289) para.31; Ferla (n39) emphasised the lack of play space in an area of 'hundreds of thousands of people' near where he lived.

³³⁹ H Wenban-Smith, A Faße and U Grote, 'Food security in Tanzania: the challenge of rapid urbanisation' [2016] 8 Food Security 973, 974

increased by 125% by 2030 (145% for Dar es Salaam)³⁴⁰ UNICEF notes that '[c]ities are becoming home to a growing proportion of Africa's children', with one in four children in Tanzania living in an urban centre, and this expected to rise.³⁴¹ Ferla reported expectations that between the 2012 and 2025 census, Tanzania will have changed from being a majority rural to a majority urban country, with Dar es Salaam, Arusha and Mwanza as 'some of the fastest-growing cities in Africa'.³⁴² He reported that the population increase of 3% a year (equating to 1 million children a year) exacerbates strains on the urban environment.³⁴³ UN statistics support these assertions, showing that 33.8% of the population in 2018 was urban, with an average annual urban population growth rate of 5.5%.³⁴⁴

It is understandable that '[a]s urbanisation rapidly transforms Tanzania's physical, social and economic landscape, attention must be paid to the conditions in which new generations of Tanzanian children will be raised'.³⁴⁵ The report notes this urbanisation may 'offer the chance of a brighter future'³⁴⁶ sought by many moving to these environments, supporting similar claims made by Ferla.³⁴⁷ The speed of urbanisation has resulted in a situation where 'the large part of our cities are high-density areas which are unplanned and continue to be unplanned'.³⁴⁸ Such cities are reportedly characterised by 'contaminated water and polluted air, traffic congestion and noise, cramped living conditions in substandard shelters built along riverbanks, on steep slopes or dumping grounds, untreated waste washing

³⁴⁰ Ibid 975

³⁴¹ UNICEF (n290) 1

³⁴² Ferla (n39)

³⁴³ Ibid

³⁴⁴ UN.Data, 'Tanzania' (UN Data, 2019) <<http://data.un.org/en/iso/tz.html>> accessed October 2019

³⁴⁵ UNICEF (n290) 1

³⁴⁶ Ibid

³⁴⁷ Ferla (n39)

³⁴⁸ Ibid

away into waterways, lack of safe places for children to gather and play, among other troubling signs of urban malaise'.³⁴⁹ Ferla describes this as having led to a situation where 'policy is not really able to keep up with the amount of migration and the fast pace of growth in these cities', with 'recreational facilities or space for playing or child-friendly cities rarely given any form of priority'.³⁵⁰

It is unsurprising that children play 'in heaps of garbage littered with dangerous and toxic materials'.³⁵¹ The UNICEF report verified concerns shared by interviewees, stating that '[c]hildren residing in informal settlements are... impacted by the unsanitary conditions created by improper solid waste disposal', with unsupervised children and toddlers found playing 'with garbage, running the risk of injury or contracting skin and diarrhoeal diseases'.³⁵² These data support interviewees claims of a need to address urbanisation for the realisation of the right to play,³⁵³ with realisation affected by a wide range of policy areas.

Campbell stated that, despite a lack of playgrounds and the fact that 'the environment is quite risky for young people[,...] kids are playing naturally'³⁵⁴. This shows that children will try and play regardless of their environment, making the provision of safe play space vital. Challenges in providing specific space for play are not limited to urban areas. Ferla reported that play 'facilities or equipment... or an environment which meets minimum safety standards as per policy [is] virtually non-existent' in rural areas.³⁵⁵ Rural environments are much less congested and have more free space. The

³⁴⁹ UNICEF (n290) 2

³⁵⁰ Ferla (n39)

³⁵¹ UNICEF (n290) 1

³⁵² Ibid 42

³⁵³ Ferla (n39); Campbell (n24); McAlpine (n25)

³⁵⁴ Campbell (n24); UNICEF (n290) 34

³⁵⁵ Ferla (n39)

availability of space in rural areas, and the contrasting lack of such in urban areas, could partly explain research on education in Tanzania that shows '[p]lay was more highly valued in urban schools'.³⁵⁶ This explains a comment made by Ferla suggesting that despite 'recreational play spaces for schools [being] under a lot of pressure' due to overcrowding in urban areas, the protection and provision of these spaces 'have a little bit more leverage' and more prioritisation than 'the idea of there being recreational space for families' and children to play such as 'a play park'.³⁵⁷

Urbanisation and population pressures pose 'a major stress on the physical and social environment where children live', including by 'erod[ing] the amount of open spaces where they can play, intensify[ing] car traffic and the danger of road accidents'.³⁵⁸ Ferla shared that 'many of the playgrounds in schools in inner cities have been overtaken by informal housing and building etc.', and that '[t]here is huge pressure on any space in the city for building and for residential and small micro-businesses etc.'.³⁵⁹ Play space is overtaken and sold illegally 'through informal networks and corruption networks'.³⁶⁰

The interview data, and secondary research, indicate that the Tanzanian government seeks to address this, with efforts to 'rekindle... and activate... the conservation and protection of urban green spaces of Dar es Salaam'.³⁶¹ Ferla described 'a very genuine effort... to have an approach of receiving public complaints on land and... trying to resolve [them]'.³⁶² He reflected upon an instance where 'school space that had previously been 'encroached

³⁵⁶ Shavega (n305) 103

³⁵⁷ Ferla (n39)

³⁵⁸ UNICEF (n290) 5

³⁵⁹ Ferla (n39); UNICEF (n290) 31; Campbell (n24)

³⁶⁰ Ferla (n39); McAlpine (n25); B Tibesigwa et al., 'In Search of Urban Recreation Ecosystem Services in Dar es Salaam, Tanzania' [2018] *EfD DP 18-06*, 7

³⁶¹ Tibesigwa et al. (n360) 7

³⁶² Ferla (n39)

on', was subsequently 'freed up and play areas... returned to the school'.³⁶³ He emphasised that attempting to 'claim back space' that had or could have been used for play 'is extremely difficult' in reality.³⁶⁴

Interviewees emphasised a need for the Tanzanian government to secure and improve play spaces through urban planning. Interviewees called for outdoor play spaces to be made 'more alluring' and safe.³⁶⁵ McAlpine claimed that there is not an 'ideological' position against the realisation of the right to play.³⁶⁶ However, the development of play space was described as 'beyond the means of the government' due to a lack of resources and capacity.³⁶⁷ Stewart suggested that considerable 'time', as well as financial and other resources, would be required for success in this area.³⁶⁸ Such considerations provide context to statements claiming that there is 'extremely little reality of urban and rural planning actually delivering on space or facility... for children's play', particularly outside schools.³⁶⁹

Interviewees recommended measures to assist in realising the right to play through the creation and protection of children's play spaces. McAlpine suggested that play spaces should be emphasised as 'a public good',³⁷⁰ this would encourage the creation and protection of play spaces, and make it easier to justify resource allocation, as the benefits for the wider community would be appreciated. McAlpine recommended that the government work alongside villages and local communities to protect and reclaim existing play space, identifying a 'real value in village-level participatory processes'.³⁷¹

³⁶³ Ibid

³⁶⁴ Ibid; Guga (n117)

³⁶⁵ McAlpine (n25); Campbell (n24); Stewart (n31)

³⁶⁶ McAlpine (n25)

³⁶⁷ Stewart (n31)

³⁶⁸ Ibid

³⁶⁹ Ferla (n39)

³⁷⁰ McAlpine (n25)

³⁷¹ Ibid

2.3.3. The United Kingdom: Education

In the UK education is a devolved matter and is generally managed by local authorities. Education institutions are subject to regular inspections and monitoring: the Education and Training Inspectorate is responsible for Northern Ireland, Education Scotland for Scotland, Estyn for Wales, and the Office for Standards in Education (Ofsted) in England. Interview data shed light on the state of play in education settings across the UK. General concerns were raised surrounding a lack of training and understanding by teachers and policymakers on the importance of play for children and their development. In comparison to data gained from Tanzanian NGOs, and that on planning in the UK, there was considerably less said about education in the UK by interviewees.

The UK education system is split into stages. Although this differs across devolved nations, there is a foundation or early years' curriculum for younger children across all nations (England and Northern Ireland up to age 6, Wales age 7 and Scotland age 8). A close analysis of the curricula of each nation shows that play is a key concept in all devolved nations at the foundation stage. Play is encouraged in education settings up to these ages.³⁷² This reflects a similar pattern as reported in the Tanzanian education system.

Once a child reaches the Key Stage 3 Curriculum in Northern Ireland, mentions of 'play' refer only to developing children's understanding of how they can play their 'part' in society or the school, or in the context of directed

³⁷² Department for Education, *The Statutory Framework for the Early Years Foundation Stage: Setting the Standards for learning, development and care for children from birth to five* (DFE-00169-2017, UK Government, 2017); COSLA, *The Early Years Framework* (Scottish Government, 2008); Department for Education, *Learning to Learn: A Framework for Early Years Education and Learning* (Northern Ireland Assembly, 2013)

role-plays or plays in drama contexts.³⁷³ In the English national curriculum, play is mentioned either in the same regards or concerning playing instruments in music classes, playing competitive games in physical education lessons, and one reference to playing mirror games in mathematics lessons for children in Year 2.³⁷⁴ In the Scottish curriculum, there is some broader mention of play in overarching curriculum goals and guidance.³⁷⁵ When the guidance is broken down across age groups, play remains focused on early years, occasionally being mentioned for children in Years 1 or 2, and only mentioned for older children in contexts of role-play for learning languages.³⁷⁶ The curriculum in Wales is currently undergoing a review, with a new curriculum expected for 2022. The Welsh Government annually 'hosts a cross-policy workshop with Welsh Government departments', including the education department, in order 'to consider issues regarding play sufficiency'.³⁷⁷ An assessment of the planned curriculum shows that play in education settings is focused on young children,³⁷⁸ or is restricted to those in Progression Steps 1 and 2.³⁷⁹ This calls into question the impact of the Play Sufficiency Duty in Wales, as play remains restricted to the curriculum of young children.

The concentration of play in the curriculum for younger children reflects concerns raised during the interviews of an outdated education system that

³⁷³ CCEA, *The Statutory Curriculum at Key Stage 3: Rationale and Detail* (Northern Ireland Curriculum: CCEA, 2007) e.g. 7 and 10

³⁷⁴ Department for Education, *The National Curriculum in England: Framework Document* (DFE-00177-2013, UK Government, 2013). Play reference to mirror games at 183.

³⁷⁵ Scottish Government, *Curriculum for Excellence*.

<<https://education.gov.scot/Documents/All-experiencesoutcomes18.pdf>> accessed November 2019

³⁷⁶ Ibid

³⁷⁷ Mannello (n169)

³⁷⁸ For example: Education for Wales, *Draft Statutory Guidance, Area of Learning and Experience: Science and Technology* (Welsh Government, 2019) 14; Education for Wales, *Draft Statutory Guidance, Area of Learning and Experience: Expressive Arts* (Welsh Government, 2019) 14

³⁷⁹ Welsh Government Draft Curriculum. <<https://hwb.gov.wales/draft-curriculum-for-wales-2022/>> accessed November 2019

does not recognise the importance of play for children, particularly in the school day.³⁸⁰ Voce argued that education policy required updating, to reflect new research in neuroscience, evolutionary biology, animal studies and sociology.³⁸¹ He claimed that the lack of impact of such research on education policy is 'a tragedy for children' and attributed blame to the fact that education policy is 'in political control', calling for education to 'be in the hands of an independent agency'.³⁸² Departments for Education tend to have primary control over children's play policies.³⁸³ Across the UK, children are required to attend school for an average of 190 days a year.³⁸⁴ The amount of time children spend in schools makes these concerns especially acute.

Reports show a considerable reduction in play or breaktime for children in schools.³⁸⁵ Similar to Tanzania, interviewees suggested that challenges facing the realisation of the right to play in the school day could be due to a lack of training for teachers on children's play. Hunter-Blair shared that many 'professionals that work with children are very interested in play, but they've had no play training', including teachers.³⁸⁶ She noted that teachers are offered 'an optional four-hour session', during their degree, 'on play and child development', and compared this with training for veterinarians for whom 'the importance of play in animal development is compulsory'.³⁸⁷

³⁸⁰ Voce

³⁸¹ Ibid

³⁸² Ibid

³⁸³ O'Loughlin (n30); Email correspondence with the Department of Education, Department for Culture Media and Sport, and Department for Communities and Local Government received August and September 2019

³⁸⁴ For a break-down of the requirements across the nations see: R Long, *The School Day and Year (England)*, (Briefing Paper No.07148, HC Library, July 2019); European Commission/EACEA/Eurydice, *The Organisation of School Time in Europe: Primary and General Secondary Education – 2018/19*. Eurydice Facts and Figures (EU, 2018)

³⁸⁵ E Baines and P Blatchford, *School break and Lunchtimes and Young People's Social Lives: A Follow-up National Study*. Final Report (BaSiS Study: UCL, 2019); DECP, *DECP Position Paper: Children's Right to Play* (BPS, 2019)

³⁸⁶ Hunter-Blair (n32)

³⁸⁷ Ibid

Hunter-Blair raised concern over the direction taken when teachers teach children about their rights. She acknowledged that children's rights is a 'thread' that flows from government, 'right down to a lot of areas, right down to education as well, where children are taught about children's rights and the teachers know about children's rights'.³⁸⁸ Whilst this was praised, Hunter-Blair raised concern over the way this happens in practice. She recognised the practical challenge of covering the topic fully, but shared concerns over the way teachers 'pick out two or three' rights to focus on as 'the most important', criticising the fact that 'the child's right to play is never usually one of them'.³⁸⁹ She expressed a feeling that teaching children of their rights becomes a 'tick-box exercise'.³⁹⁰

Hunter-Blair shared that to address this gap in training and teaching practice, Play Scotland organises conferences, seminars, CPD events, and provide resources for teachers that map play across the curriculum to 'validate' the use of play in schools, to enable them 'to justify what they're doing and... articulate the benefits of why they're doing what', and to help teachers achieve targets in a way that is most appropriate and beneficial for children.³⁹¹ PlayScotland map the right to play with other 'curricular links with literacy, health and wellbeing, social studies, expressive arts'.³⁹² The hope is that mapping will 'make it as easy as pie' for teachers, to counter a 'struggle to see what relevance Article 31 is and how to implement it'.³⁹³ Such NGO activities were described as having considerable impact in persuading teachers 'to devote precious time towards [play] in the classroom and outside the classroom'.³⁹⁴ This reflects findings that NGOs

³⁸⁸ Ibid

³⁸⁹ Ibid

³⁹⁰ Ibid

³⁹¹ Ibid

³⁹² Ibid

³⁹³ Ibid

³⁹⁴ Ibid

support the realisation of the right to play, and that mapping plays onto other frameworks can increase the realisation of the right to play.

2.3.4. The United Kingdom: Planning

Planning was raised repeatedly during the expert interviews. The challenges surrounding planning and children's presence outdoors were acutely felt by NGOs working in the United Kingdom.³⁹⁵ Since the post-2010 fiscal austerity measures were introduced in the UK a significant number of public spaces have been sold by local authorities to help with tighter budgets,³⁹⁶ as a 'quick-fix' to assist in the maintenance of 'frontline community services'.³⁹⁷ These public spaces include libraries, youth centres, public leisure centres and swimming pools, and outdoor spaces.³⁹⁸ Similar claims are made regarding parks and local green space.³⁹⁹ This loss of recreational or play space for browning was raised by participants.⁴⁰⁰ Hunter-Blair stressed the gravity of this, declaring that informal and common spaces 'are actually the most important play spaces with the most play value in them'.⁴⁰¹ This is partly because they are 'in and around where [children] live', and offer alternative play opportunities to areas with prescriptive play equipment such as spaces with 'a few swings, a roundabout and a bit of rubber surface, there's very little play value in that'.⁴⁰²

³⁹⁵ Section 3.2 and Chapter 3 Section 2.3

³⁹⁶ Locality, *The Great British Sell Off* (Locality, 2018) <<https://locality.org.uk/wp-content/uploads/2018/06/The-Great-British-Sell-Off-FINAL.pdf>>accessed December 2019

³⁹⁷ C Rodgers, 'Urban commons are under siege in the age of austerity – here's how to protect them', (*The Conversation*, 2019) <<https://theconversation.com/urban-commons-are-under-siege-in-the-age-of-austerity-heres-how-to-protect-them-121067>>accessed December 2019

³⁹⁸ Locality (n396) 4

³⁹⁹ Fields in Trust, 'Research: New research shows UK parks and green spaces generate over £34 billion of health and wellbeing benefits', (*Fields in Trust*, May 2018) <<http://www.fieldsintrust.org/News/research-new-research-shows-uk-parks-and-green-spaces-generate-over-£34-billion>>accessed December 2019

⁴⁰⁰ Campbell (n24) (whose UK-office is in Scotland); Hunter-Blair (n32)

⁴⁰¹ Hunter-Blair (n32)

⁴⁰² Ibid; On kit, fence and carpet playgrounds see Chapter 2 Section 5 and Chapter 3 Section 2.2.

Some measures are in place to protect the existence of play spaces. Hunter-Blair shared that 'if you remove a full-size football pitch, the statutory consultee is Sport Scotland, and they have to be assured that the sporting place will be replaced... within a certain limit of that neighbourhood'.⁴⁰³ Mannello stated that Wales have measures in place to protect play places, stemming from the Play Sufficiency measure.⁴⁰⁴ It is a statutory requirement that local authorities recognise 'all open spaces are potentially important areas where children can play'.⁴⁰⁵ Local authority Play Sufficiency Assessments should 'draw upon existing Open Space Assessments and other local sources of information to map areas that are used for play or could potentially be used for play... [including] residential streets and school grounds'.⁴⁰⁶ She highlighted the *Planning Policy Wales Technical Advice Note (TAN 16): Sport, Recreation and Open Space*, which states that:

It is vital that children and young people, including those who are disabled, can access areas for casual and more formal organised uses, which provide safe, secure opportunities to socialise and play. While formal, equipped play areas provide opportunities, particularly for young children within communities, these are not the only forms of provision which should be offered... 'playable spaces'... and informal areas for 'environmental play' can provide opportunities for children... for active, physical play⁴⁰⁷

⁴⁰³ Hunter-Blair (n32)

⁴⁰⁴ Mannello (n169)

⁴⁰⁵ Ibid

⁴⁰⁶ Ibid

⁴⁰⁷ Welsh Assembly Government, *Planning Policy Wales Technical Advice Note 16: Sport, Recreation and Open Space* (Welsh Assembly, 2009), 18
<<https://gov.wales/sites/default/files/publications/2018-09/tan16-sport-recreation-open-space.pdf>> accessed December 2019

This guidance suggests 'integration of play areas into the built and natural environment', and emphasises the 'essential' need to involve children in planning provision, 'particularly in providing advice about the location and design of formal and informal play areas for new housing developments'.⁴⁰⁸ The Welsh guidance implies a holistic approach to addressing play spaces, with a wider focus on provision than that limited to early years and KFC provision. It recognises the importance of protecting and planning for local, informal, play spaces. A report reflecting research into the impact of the Play Sufficiency Duty made clear that '[p]olicy does not take place in a vacuum', noting the impact of austerity measures in increasing the challenge of implementing the right to play.⁴⁰⁹ It showed that the obligations in the Play Sufficiency Duty had 'required local authorities to think differently, giving rise to a number of innovative initiatives' to provide play opportunities for children, and shared that '[d]espite the challenges faced, there is still great enthusiasm for the Play Sufficiency Duty' in Wales.⁴¹⁰

O'Loughlin suggested that developers are 'very, very acute' in how they follow planning policies, finding loopholes to the policies that result in measures such as 'wider grass verges, which doesn't really contribute anything to children's ability to play' (*sic*).⁴¹¹ Campbell emphasised that there is significant pressure on 'land use for development'.⁴¹² These statements demonstrate the need to ensure that policies are robust, not 'old and outdated',⁴¹³ and give comprehensive protection and guidance on planning, development and the protection of children's formal and informal play spaces. This is especially so in situations of austerity and contexts

⁴⁰⁸ Ibid

⁴⁰⁹ Russell et al. (n187) 1

⁴¹⁰ Ibid 2 and 1

⁴¹¹ O'Loughlin (n30)

⁴¹² Campbell (n24)

⁴¹³ O'Loughlin (n30)

where measures are required to encourage children to return to the public space for play.

One such action taken to assist children in reclaiming public space for play is the 'No Ball Games' campaign in Scotland. This campaign involves encouraging local authorities to remove 'No Ball Games' signs across Scotland, has been led by PlayScotland and MSP Ruth Maguire, and is 'one of the asks in the Play Strategy'.⁴¹⁴ It focuses attention on the benefits of children playing outdoors, including on the health benefits of outdoor play, and moves one step closer to enabling children to be accepted in the public space, by removing a visible barrier and hostile approach to children's presence and play: 'these signs have very negative connotations about who has the right to use the public realm'.⁴¹⁵

Hunter-Blair shared successes of Glasgow City and Aberdeen Councils support for the campaign, and Dundee Council looking at taking further steps by 'replacing [the signs] with a positive 'This is a Play Area' sign or, 'This is a Play Street''.⁴¹⁶ She noted a key obstacle to the success of the campaign in 'finding all the signs, there are so many of them'.⁴¹⁷ Another measure encouraged by NGOs in Scotland and England is the establishment of 'Twenty's Plenty' speed signs, closing streets, and re-envisioning potential play spaces.⁴¹⁸ This comes from a desire to move away from KFC playgrounds, and from a need to find resource-light ways to realise the right to play. Whilst KFC playgrounds do hold some value for the right to play, in giving protected spaces designated for children and their play, provision of

⁴¹⁴ Hunter-Blair (n32)

⁴¹⁵ Ibid

⁴¹⁶ Ibid

⁴¹⁷ Ibid

⁴¹⁸ Ibid; and Voce (n27)

KFC playgrounds are not enough to fulfil the obligations of the right to play.⁴¹⁹

Voce shared his experience of England's 2008 Play Strategy and its impact on play spaces. Implementation of the strategy involved two phases; the first was 'all about building new playgrounds'.⁴²⁰ This phase was driven by the play industry lobby, and resulted in 155 'top tier authorities' in England receiving one-million-pounds to build 3,500 'newer, shinier' KFC playgrounds.⁴²¹ The second phase of the Play Strategy was to involve developing '30 new adventure playgrounds', and to conduct:

'a proper audit of how children and where children played... where the existing opportunities were, what the barriers were and to develop a long-term plan for how to overcome those barriers and to begin to develop the public realm in a different way so that children had safe routes, safer streets, better play areas. But more importantly, a more generally child-friendly public realm starting on their doorstep.'⁴²²

This second phase was pulled before it was able to have much effect, but its goals signal towards some measures that could be taken to more significantly impact the realisation of the right to play. First, 'a proper audit of how children and where children play'.⁴²³ Voce described a project, 'the Play Shaper Programme', to train planning professionals and open space strategists to develop and enhance use of geographical information systems (GIS) to conduct 'proper surveys, audits and reviews of the demographic interaction of the built environment'.⁴²⁴ These methods assess 'how children

⁴¹⁹ See critiques of KFC playgrounds in Chapters 2 and 3, and discussion on obligations in Chapter 5

⁴²⁰ Voce (n27)

⁴²¹ Ibid

⁴²² Ibid

⁴²³ Ibid

⁴²⁴ Ibid

move, how they [get] to school... leisure centres... parks and play areas, how they interacted with traffic'.⁴²⁵ They provide a much deeper understanding of children's play and how they interact with the space around them. Conducting GIS assessments would provide local authorities and planning officers with information necessary for knowing which spaces must be protected, improved, added or adapted to support children's play. The use of GIS, and other similar methods, to assess the child-friendliness of space links to the final point made by Voce. This calls for the development of 'a more generally child-friendly public realm starting on their doorstep'.⁴²⁶ Voce drew a comparison here between children and skylarks, noting the skylarks' position as 'an indicator species in biodiversity', meaning that if an ecosystem is created 'in which skylarks thrive, then you can say that the whole ecosystem is thriving in a biodiverse and sustainable way'.⁴²⁷

O'Loughlin echoed this sentiment, arguing for further change in the approach to planning, exclaiming 'forget about the playing in the park for young children, we'll give play to the whole community'.⁴²⁸ She reflected that if a planning policy framework is adopted 'that is play-proof[,]... it would benefit everyone'.⁴²⁹ These issues were addressed in Chapter 3, which argued that the right to play is impacted upon by children's ability to move freely in the public realm with safe accessible play space, requiring intelligent universal design.⁴³⁰ Safety and accessibility are key to both elements of this.

Hunter-Blair stressed the value to the wider community of a playable and child-friendly public realm, in the context of the disabled child's right to play.

⁴²⁵ Ibid

⁴²⁶ Ibid

⁴²⁷ Ibid

⁴²⁸ O'Loughlin (n30); Hunter-Blair (n32)

⁴²⁹ O'Loughlin (n30)

⁴³⁰ Ibid; Chapter 5 Section 4.2.1.3 on 'universal design'.

She argued that 'good play design is inclusive', sharing that double-width slides installed in some playgrounds for disabled children also allow adults to go down slides with young children and can be used by teenagers with skateboards, claiming that this 'accommodates everybody'.⁴³¹ Hunter-Blair claimed that inclusive planning 'costs less than putting in specialist provision', which carries stigma and 'makes people feel isolated'.⁴³² She pointed to Gil Penalosa's work on inclusive urban design, stating 'if a city is suitable for an 8-year-old it is suitable for an 80-year-old. [We] shouldn't be designing for 30-year-olds who are fit, athletic, and probably drive'.⁴³³ Gil Penalosa states that priorities in urban design 'must be about most vulnerable citizens', arguing that '[t]he end result would be great cities for *everyone*', suggesting that this has far-reaching consequences for the environment, public health and the economy.⁴³⁴

Children face adverse reactions to their presence in the public realm, particularly adolescents.⁴³⁵ Interviewees regard the necessary means to address this in the UK as two-fold: first, the built environment must be adapted and developed to allow for safety, free play, and accessibility for children; second, a cultural shift is required. The former has been addressed in part in the Tanzanian context.⁴³⁶ Additional suggestions were given to address the development, adaptation and use of public space in the UK. The first related to the use of streets. Hunter-Blair argued that local authorities should close streets, 'especially during school holidays between ten and four, to let children play in them'.⁴³⁷ A campaign, initiated in 2007 by Playing Out,

⁴³¹ Hunter-Blair (n32)

⁴³² Ibid

⁴³³ Ibid; G Penalosa and LJ Pearson, 'How to move from talking to doing: Creating sustainable cities', in L Pearson, P Newton and P Roberts (eds.) *Resilient Sustainable Cities: A Future*, (Routledge, 2014) 235

⁴³⁴ Ibid 241

⁴³⁵ Chapter 3

⁴³⁶ Section 2.3.2

⁴³⁷ Hunter-Blair (n32)

aims to see children playing out as 'a normal everyday activity'.⁴³⁸ Through their work, they have seen hundreds of streets closed for playing out. In June 2019, the Minister of State for Transport wrote to all local authorities in England to 'encourage' councils to occasionally close residential streets 'to facilitate children's play'.⁴³⁹ The letter acknowledged the important developmental value of play and included nostalgic reflection on the normality of 'children playing unsupervised in the streets of their local area', 'a few generations ago'.⁴⁴⁰ It does not refer to the right to play, but provides guidance for councils on facilitating street closures for play. This letter is significant in its support of the right to play in the UK. However, street closures remain an "event", requiring considerable time investment by the local community, not the norm.

The second suggestion related to the use of schools. Schools in the UK generally have playgrounds or sports fields for children's use. These playable spaces are locked and inaccessible during evenings and weekends. In urban environments, or in areas where children live near busy or main roads, these spaces could be the safest and most significant play spaces near children's homes.⁴⁴¹ It is no surprise that interviewees suggested such space be made more accessible to children for play, outside school hours⁴⁴² a similar suggestion to that given in the Tanzanian context.⁴⁴³ Mannello highlighted that the Welsh Government has called on local authorities to consider school grounds when mapping areas that are, and could be, used for play.⁴⁴⁴

⁴³⁸ Playing Out, 'What is Playing Out' (*Playing Out*) <<https://playingout.net/about/what-is-playing-out/>>accessed March 2020

⁴³⁹ Letter from Michel Ellis MP to 'All local highway authorities in England' (13 June 2019) <<https://playingout.net/wp-content/uploads/2019/06/Play-Streets-Letter-1.pdf>>accessed March2020

⁴⁴⁰ Ibid

⁴⁴¹ Hunter-Blair (n32)

⁴⁴² Mannello (n169); Voce (n27); Ibid

⁴⁴³ Section 2.3.2

⁴⁴⁴ Mannello (n169)

Measures to increase accessibility are in place in a few schools in Dundee, supported by PlayScotland.⁴⁴⁵ These schools make their playgrounds accessible during summer holidays, and weekends in the winter.⁴⁴⁶ This appeals to parents as there is comfort to the familiarity of the location, and to local authorities as it utilises existing space.⁴⁴⁷

Another aspect emphasised by participants is a view that 'children come at the bottom of the pecking order of who has the right to use the public realm'.⁴⁴⁸ Voce described this as stemming from cultural perceptions of the natures of childhood and adulthood.⁴⁴⁹ Voce illustrated the cultural view as being of 'binary opposites, in which adults hold the power and the responsibility and children are... subordinate'.⁴⁵⁰ This 'default setting' was described as 'oppressive' but 'overlooked', with Voce arguing that 'we can't see it because we were all brought up that way and we all bring our children up that way because it's the norm'.⁴⁵¹ Hunter-Blair described the impact of the cultural perspective as resulting in prioritisation of public space in the UK as follows: 'the cars come first, pedestrians, cyclists – everybody's more important than the children just playing'.⁴⁵² These attitudes limit children's play space to designated areas.⁴⁵³

Addressing such attitudes in the UK was acknowledged as 'quite a hard thing', and would necessarily involve very local and individualised efforts.⁴⁵⁴ O'Loughlin described a need to ensure that children are 'able to feel visible

⁴⁴⁵ Hunter-Blair (n32)

⁴⁴⁶ Ibid

⁴⁴⁷ Ibid

⁴⁴⁸ Ibid

⁴⁴⁹ Voce (n27)

⁴⁵⁰ Ibid

⁴⁵¹ Ibid

⁴⁵² Hunter-Blair (n32)

⁴⁵³ Ibid

⁴⁵⁴ Ibid

and... able to play'.⁴⁵⁵ This process of cultural change, albeit not simple, was viewed as requiring less financial investment as the creation and maintenance of play 'equipment' and the setting aside of specific play space such as KFC playgrounds.⁴⁵⁶ Hunter-Blair advocated 'high-level interventions' for instigating a cultural shift to 'stop children feeling... that they're not wanted to be visible or valued in the public realm', that would invalidate a custom 'seen to give adults permission to chase the children off the public realm'.⁴⁵⁷ She used the example of 'No Ball Games' signs.⁴⁵⁸

Central to interviewee recommendations is the issue of childproof policy. O'Loughlin suggested that childproofing should happen 'at the first juncture' of the development of policy,⁴⁵⁹ with questions asked such as 'what effect is this going to have on children's ability to play?'.⁴⁶⁰ Voce recommended a broad range of policy areas to consider, including 'those sectors that don't always think about children' such as 'planning, housing, streets, traffic, transport, public health... parks and recreation and so on... the public realm, [and] the built environment in particular'.⁴⁶¹ One way of doing this is to use GIS in order to fully embed 'understandings about children's geographies' into the planning framework.⁴⁶² Another is to bring policymakers 'together with advocates' and researchers, to 'cross-pollinate', as done by organisations such as PlayEngland.⁴⁶³ In the context of UK planning, the hope is that such events would 'get planners thinking more from a children's

⁴⁵⁵ O'Loughlin (n30)

⁴⁵⁶ Hunter-Blair (n32)

⁴⁵⁷ Ibid

⁴⁵⁸ Ibid

⁴⁵⁹ O'Loughlin (n30)

⁴⁶⁰ Ibid

⁴⁶¹ Voce (n27)

⁴⁶² Ibid

⁴⁶³ Ibid

perspective, to think more about participation, more about engagement, [and] to see children more as stakeholders in the public realm'.⁴⁶⁴

The latter point emphasises participation and engagement of children in the planning process, in line with Article 12 UNCRC. Voce stated that the planning framework should be informed by 'the way children can best participate and be engaged in the way that their local neighbourhoods respond to their needs as stakeholders, as civilians, as pedestrians'.⁴⁶⁵ Respect of Article 12 in planning processes would be a step towards this. At the time of interview, the Scottish Government was debating a new planning Bill. Hunter-Blair shared a desire to see a statutory consultee concerning planning and the removal of play spaces, describing a hope that such a consultee would result in the right to play being 'taken account of'.⁴⁶⁶ The Planning (Scotland) Act 2019 (asp.13) stipulates that measures must be taken by planning authorities to 'promote and facilitate participation by children and young people... in the preparation of the local development plan', that their views are to be sought, and given regard, in the production of evidence reports, and that these reports must 'include a statement on... (iii) children and young people'.⁴⁶⁷ The Act moves closer to the policy environment in Wales, with a requirement that planning authorities 'must assess the sufficiency of play opportunities in its area for children'.⁴⁶⁸ Hunter-Blair praised these commitments as a significant success.⁴⁶⁹

⁴⁶⁴ Ibid

⁴⁶⁵ Ibid

⁴⁶⁶ Hunter-Blair (n32)

⁴⁶⁷ s7(5) and (6)

⁴⁶⁸ s7(6)

⁴⁶⁹ See: Play Scotland (@PlayScotland) 'So pleased that children and young people's voices are going to be heard and that [#PlanningBill](#) amendment 82 has been withdrawn. C & YP have a statutory right to be participants in formation of Local Development Plans - so important that C&YPs voices are heard' (*Twitter*, 20 June 2019) <<https://twitter.com/PlayScotland/status/1141591570661199872?s=08>> accessed June 2019; Play Scotland (@PlayScotland) 'Play Scotland are celebrating the play sufficiency duty in the new Planning (Scotland) Act 2019. It's been a long but worthwhile journey for us at

3. Conclusion

Steps have been taken in both the UK and Tanzania towards implementing the right to play, but much more is needed to counter negative attitudes and competing pressures.

Interview data showed that incorporation leads to greater political support for the right, increases the likelihood of additional measures for realisation, and reduces the ease of retrogressive steps. The United Republic of Tanzania has stronger incorporation of the right to play in national legislation than the UK, with both Tanzania and Zanzibar including explicit reference to, and direct incorporation of, the right to play in their respective children's acts. The Zanzibari legislation offers particularly strong protection for the right. In contrast, the UK has not directly incorporated the CRC throughout the state. England, Northern Ireland and Scotland have not incorporated the CRC, offering the right to play poor protection. The Welsh Measure and the Play Sufficiency Duty evidence a strong legislative framework for the protection and realisation of the right to play in Wales.

Section 2.2 showed that understanding the importance and nature of play for children is crucial for realising of the right. It is vital for high-level governmental support, emphasised as necessary for additional measures. Tanzania, Scotland and Wales were shown to have the most robust levels of political support. The challenges facing Northern Ireland, as without a sitting government at the time of interview, were significant. Hope was shared of the potential for increased realisation of the right. The context in England was shown to be more negative with little high-level interest in the right to play, except for the Department of Transport letter guiding on street play

Play Scotland' (Twitter, 30 July 2019)
<<https://twitter.com/PlayScotland/status/1156240283698376704?s=08>> accessed July 2019

measures. Understanding of the value of play was revealed as necessary to counter challenges at the community level in both states. These challenges are wide-ranging and entrenched. They included perceptions of play as a luxury or as time-wasting, and negative perceptions of children in public space.

For both countries, more steps are required to broaden the inclusion of play within national curriculums. This is particularly so for children outside of early years frameworks. Teacher training must be adapted in the UK to include compulsory training on children's play and ways in which it can be supported in education settings. In Tanzania, there is a need to address the shortage of trained teachers and to extend play training to post-primary teachers. Findings related to education in Tanzania show that there is in principle support for including play in education settings by the Tanzanian government. Still, there are considerable challenges in realising the right due to a lack or over-stretching of resources, and perceptions of play by parents and the wider community. Findings related to education in the UK show that play is being pushed out of the school setting with reductions in playtime during the school day, a shift in focus away from play-based learning to more structured learning, and a focus on play as for early years. Concerning planning, both Tanzania and the UK have seen rapid urbanisation affect the enjoyment of the right to play. The data showed that children compete against financial and spatial pressures, whether due to corrupt practices, austerity measures, the loss of existing play space for development, or the prioritisation of vehicles.

NGOs are valuable in countering negative attitudes, providing education on the importance of play and assisting teachers and government officials to understand how realising the right to play can help them achieve other policy and teaching goals, through mapping and the use of language. These

measures show a need to think outside of the box to realise the right to play. NGOs have a crucial role in lobbying and advocating government, and in delivering training on the right to play. NGO involvement is necessary and effective in supporting the realisation of the right to play.

Whilst balance was sought throughout, interview data showed more emphasis on political support by UK participants, and on community support by Tanzanian participants. This arguably reflects the situation in both states. The data has shown that the Tanzanian government is more supportive of the right to play than the UK government, with legislative support in the former, making this less of an issue worth attention for Tanzanian-based participants. More emphasis was placed on education by Tanzanian participants, and on planning by UK participants. This may reflect the situation in the states, with pressures on play in education a relatively new challenge in the UK, and the rapidity of urbanisation in Tanzania resulting in a need for NGOs to “catch up” with the situation, and may reflect donor focus on education in Tanzania.

Chapter 7: Conclusion

This thesis has addressed a significant gap in child rights literature, providing a comprehensive study of the right to play. It has examined the reasons behind the right to play's perceived status as a forgotten right and has investigated in detail the context surrounding the right and its realisation. It has reflected on the importance of play, the multifaceted challenges to the realisation of the right, the legal history of the right, and the obligations pertaining the right to play. It triangulated this research with an investigation into the state of play in the United Kingdom and Tanzania, as part of a multiple case-study. This concluding chapter brings together the key findings of the thesis and provides recommendations to advance the realisation of the right to play. It does so by highlighting key findings from each chapter and drawing together connected themes from the thesis. It contends that the endemic lack of understanding of the importance and nature of the right to play underpins its status as luxury and forgotten. It then argues that there are three vital factors for the implementation of the right: time, space and acceptance. The chapter ends with a reflection on the coronavirus in the context of the findings of this thesis.

Chapter 1 evidenced the difficulties in providing an operational definition of play due to the concept's abstract nature and argued that this presents an obstacle to providing conceptual clarity to the right. Chapter 2 made clear the critical importance of play for children. This feeds into our understanding of the right to play, supporting a move away from viewing the right to play as a luxury. Chapter 2 showed the value of play for children's development, including their education (cognitive development) and health (physical development). Both the intrinsic and instrumental value of play for children

means that realisation of the right to play must not be hampered by the definitional difficulties outlined in Chapter 1.

Chapter 3 investigated the extensive challenges to the realisation of the right to play. The findings in Chapter 6 reinforced and built on the findings in Chapter 3. Chapter 3 addressed the lack of safe space for play and highlighted the need for space that is outdoor, close to children's homes, and natural. The findings in Chapter 6 reinforced the key role of planning in the realisation and enjoyment of the right to play, and the availability of safe space. Chapter 3 noted the challenges posed by perceptions of children in the public space, varying in focus from children as vulnerable to children as nuisances. Interview data discussed in Chapter 6 showed that perceptions of children as becomings were a substantial hurdle to realising the right to play, alongside perceptions of children as nuisances or as in need of protection. Chapter 3 examined the challenges facing the realisation of the right to play in situations of conflict and humanitarian disaster as well as other crises and poverty situations, before discussing the unique obstacles facing the girl child in realising the right to play. The interview data discussed in Chapter 6 supported the earlier findings related to poverty by providing testimony of parental views that children should be working instead of engaging in play. It evidenced that poverty affects availability of play resources. The extensive debate on children's play and technology was also explored in Chapter 3. The thesis argues that, whilst technology can be used for play and should be included in measures for realising the right, it poses considerable threats to children's play. Therefore, a careful management and balance of technology and play must be found. These findings were supported by the empirical research conducted in the context of the case studies outlined in Chapter 6, as well as by comments of the Committee addressed in Chapter 4.

Chapter 3 also showed that adolescents face distinct challenges in the realisation of their right to play. The discussion in Chapter 2 reveals that there is a gap in literature on the value of play for adolescents. Chapter 5 criticised the Committee for its statement in GC17 that '[a]s children grow older their needs and wants evolve from settings that afford play opportunities to places offering opportunities to socialize, be with peers or be alone'.¹ Chapter 4 argued that the Committee sustained such perceptions by including no reference to the right to play in General Comment 4 on adolescents' health and development, but praised the Committee's inclusion of the right to play in General Comment 20 on implementing children's rights in adolescence. A key finding arising from this thesis is that greater attention must be afforded to the nature, value and realisation of the right to play for adolescents. This has implications for the implementation of the right to play, suggesting that governments should invest more into supporting research to fill this knowledge gap and measures to realise the right for adolescents. Relatedly, whilst having drawn on global literature where possible, this thesis shows that there is a considerable lack of global research on the right to play and play related matters. Much of the discussion on the importance of play in Chapter 2, for example, stems upon Western research. This is a clear gap in the literature that would benefit from development.

Chapters 3 and 6 provided examples of the ways in which play has been removed from the school day, and that a scholarisation of childhood threatens the realisation of the right due to a lack of mental space and physical time for play. This was similarly highlighted by the Committee in its Concluding Observations, addressed in Chapter 4. The study of the *travaux préparatoires* revealed that the relationship between the right to play and

¹ ComRC, 'General Comment No.17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art.31)' (2013) CRC/C/GC/17, para.14(e)

the right to education has been complicated from the outset, with questions raised about whether the right to play should be directed for the purposes of education. The drafters of the Convention concluded that the right to play should be separated from education, underscoring its value for the holistic development of the child, not simply educational value, and a belief in its status as a characteristic of childhood worthy of protection. The discussion in Chapter 2 showed the value of play for children's education, which should support greater realisation of the right to play in education settings. The thesis reveals a complicated relationship between the right to play and education.

Chapter 4 examined the Committee's approach towards the right to play, analysing how the Committee engaged with the right in its Concluding Observations, General Comments and Days of General Discussion. The Committee has addressed measures of implementation, highlighted challenges facing the realisation of the right, and has criticised states in their failure to realise the right. However, Chapter 4 showed that the Committee has not engaged consistently with the right to play. This threatens to undermine the importance accorded to the right to play, as well as the realisation of that right, and to perpetuate its status as luxury and forgotten. Chapter 4 showed that the Committee has failed to engage with the right to play in Concluding Observations even in contexts where State party Reports have made explicit reference to the right. The structure of Concluding Observations includes the section 'Education, Leisure and Cultural Activities (arts. 28-31)'. Chapter 4 shows that this is the primary place in which the Committee addresses the right to play in Concluding Observations. It would appear that subsuming the right to play with the right to education in the structure of Concluding Observations hampers the Committee's ability to afford the right to play the attention it warrants. Chapter 4 revealed greater

engagement with the right since the publication of General Comment 17. The rise in engagement with the right remains limited, and more is needed to overcome the Committee's neglect of the right. Increased engagement with the right offers more normative content and greater detail for implementation. Such detail could lead to an increase in the realisation of the right to play as States parties reflect on recommendations and takes steps to implement them, under clearer guidance.

This thesis has demonstrated the significant, wide-ranging, and entrenched challenges to realising the right to play. Underpinning all these challenges is an endemic lack of understanding of both the importance and nature of play for children, as argued in Chapter 3. This begets perceptions of play as a luxury, and to the right being forgotten in state and Committee practice. This reinforces issues at the state level of resource constraints and the challenges posed by political attitudes to children's rights, as discussed in Chapter 6. It underpins the Committee's inconsistent engagement with the right, discussed in Chapter 4. The very nature of play, as an abstract concept, serves to buttress this lack of understanding. Recognizing the right to play as vital for children would impact upon the realisation of the right by placing it at the forefront of decisions impacting children. Such a shift would prioritise the full implementation of the right and reverse its status as forgotten.

Chapter 5 shows that measures required to realise the right to play are far-reaching and multifaceted. A key step in realising the right to play is incorporation. The discussion in Chapter 6 evidenced the value of legislative backing for the right to play, with interviewees arguing that it provided greater strength and consistency of support between governments and in times of crisis. The value of incorporation in supporting advocacy was made clear by interviewees from both the UK and Tanzania. The impact of

legislation such as the Welsh Play Sufficiency Duty on ensuring steps are taken to realise the right to play, even in contexts of austerity, highlights the importance of direct incorporation of the right to play.

As states undertake further measures to realise the right to play, three vital factors for the implementation of the right are evident: time, space and acceptance. A deficiency in any of these aspects hampers the possibility of the realisation of the right to play. Time and space for play must include both physical and mental time and space. Space for play, as stressed throughout this thesis, must be readily accessible and safe, and must include natural and outdoor space. Safe play space must be available in both urban and rural environments. Urban planning authorities must be enabled, and required, to consult children and communities to assess the impact of development plans on children's play. An overhaul of planning practices may be necessary to acknowledge the long-term impact of development and the value of sustainably designed cities for all including children.

The final factor vital for the implementation of the right to play is acceptance. The right to play will not be realised for all children whilst perceptions of play as frivolous, a luxury or a nuisance prevail. To arrive at a place where play is afforded the attention and value it deserves, greater education and awareness-raising is necessary. Article 42 of the Convention on the Rights of the Child is central to ensuring the wide reach of knowledge and understanding of the right to play.² Such awareness-raising must be widespread to counter negative and discriminatory perceptions towards children's play during the school day, in public spaces, or more broadly. It must highlight both the importance and nature of play and encourage broad

² 'States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike'

acceptance of children's play. Chapter 6 demonstrated that NGOs can play a valuable role in this through advocacy and through mapping play onto policy aims to "make it easy" for policymakers, teachers and governments to take steps towards realising the right to play. They can challenge assumptions, raise awareness, and undertake measures that realise and implement the right to play. Governments should seek to support their work, including through funding and involvement.

Ultimately, a shift in perception is required from states, the Committee and broader society, to realise the right to play.

At the time of writing, the world is facing a global coronavirus pandemic.³ The Committee issued a statement of concern on 'the situation of children globally, particularly those in situations of vulnerability, due to the effects of the COVID-19 pandemic'.⁴ This statement was revealing in its engagement with the right to play. In 2004 the Committee stressed the 'endangered' status of the right to play.⁵ In 2013, it stressed that that the right is neglected in crisis situations.⁶ The Committee's statement in 2020 perpetuated this neglect by making no mention of the right to play. The second paragraph of the statement calls on states to:

³ WHO, 'WHO Director-General's opening remarks at the media briefing on COVID-19' (WHO, 11 March 2020) <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed August 2020

⁴ Committee on the Rights of the Child (ComRC), 'The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children' (2020) INT/CRC/STA/9095/E (COVID Statement), 1

⁵ Committee of the Rights of the Child (ComRC), 'Day of General Discussion: Implementing Child Rights in Early Childhood' (17 September 2004) para.9

⁶ GC17 para.43

Explore alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities.⁷

This statement clearly highlights all other Article 31 rights yet omits the right to play. It thus reinforces the findings of this thesis that, although there has been some improvement in the Committee's engagement with the right since the publication of GC17, the lack of consistency in its approach continues to undermine the right to play in the schema of the CRC as a whole – and in terms of the implementation of that schema.

The coronavirus pandemic has evidenced and exacerbated many of the challenges outlined as facing the realisation and exercise of the right to play. This includes a loss of safe space for play. Global coronavirus social distancing and lockdown measures meant that children were unable to meet with peers for play and led to the closure of publicly accepted play spaces such as playgrounds, including those in schools.⁸ They have required that children play, primarily, indoors and for many children this play has been either alone or with adults.⁹ Children in India have described the lockdown as being 'like we are trapped in a den and we have no other way to get out of it'.¹⁰ They emphasised their inability 'go out to meet friends and cousins' and the lack of 'outdoor activity'.¹¹ Children in housing with no gardens, or

⁷ COVID Statement (n4)

⁸ S van der Berg, 'COVID-19 school closures in South Africa and their impact on children' (*The Conversation*, 14 July 2020) <<https://theconversation.com/covid-19-school-closures-in-south-africa-and-their-impact-on-children-141832>> accessed August 2020; UNESCO, 'Education: From Disruption to Recovery' (UNESCO, 2020) <<https://en.unesco.org/covid19/educationresponse>> accessed August 2020 describes the impact of school closure measures on over 60% of the world's children; M O'Neill, 'How COVID-19 is changing our perspective on playgrounds' (AD Middle East, 26 April 2020) <<https://www.admiddleeast.com/how-covid-19-is-changing-our-perspective-on-playgrounds>> accessed August 2020

⁹ H Dodd et al., *Report One: Findings from 1728 parents/carers of 2-4 year olds on stress, child activities, child worries and need for support* (CO-Spyce Study, 2020); BBC, 'India Coronavirus: Children portray Covid-19 and lockdown' (BBC, 10 May 2020) <<https://www.bbc.co.uk/news/av/world-asia-india-52590870/india-coronavirus-children-portray-covid-19-and-lockdown>> accessed August 2020

¹⁰ BBC (n9)

¹¹ Ibid

in urban areas with limited natural space, have faced additional challenges and discrimination in their enjoyment of the right to play during lockdown periods. Research has shown that screen use during the lockdown period has been heavy. For instance, a UK-based study of 1728 families showed that 26% of 2-4-year olds spent over 3 hours daily 'watching a screen but not interacting with it' and 61% were reported as spending up to 2 hours a day playing screen-based games.¹² This data demonstrates that the coronavirus pandemic has resulted in increases in excessive use of technology. The evidence thus far is that children's play is suffering to a considerable degree as a result of the pandemic.

Another way that the coronavirus has exacerbated children's ability to exercise their right to play relates to children in the public space and perceptions of children's play. Children's play and presence outdoors is viewed as dangerous. This is so both from the perspective of keeping children safe from the coronavirus, and from the perspective of children's outdoor play posing an additional risk to others. An anecdote from South Africa describes the change in perception of outdoor space, describing a mother taking steps to keep her children from leaving their yard to retrieve a ball from the street.¹³ On the other hand, a report details the arrest of a mother in Tacloban City, the Philippines, after allowing her children to play outdoors during the lockdown.¹⁴ Other reports show that lockdown and social distancing measures have led to considerable hostility towards, and negative reporting of, adolescents playing in the street during lockdown. A

¹² Dodd et al. (n 9)

¹³ K Moeti, 'How I'm Teaching My Kids Not To Fear Everything During A Pandemic' (NPR, 20 June 2020) <<https://www.npr.org/sections/goatsandsoda/2020/06/20/880858576/how-im-teaching-my-kids-not-to-fear-everything-during-a-pandemic?t=1596629046781>> accessed August 2020

¹⁴ J Gabieta, 'Woman arrested for refusing to keep her children at home during COVID-19 quarantine' (*Inquirer.net*, 24 March 2020) <<https://newsinfo.inquirer.net/1247729/woman-arrested-for-refusing-to-keep-her-children-at-home-during-covid-19-quarantine>> accessed August 2020

BBC report included a senior police officer describe 'young people playing football in the street' in an urban area with very little park or nature space as the 'biggest problem' in and danger to the spread of the coronavirus.¹⁵ Another example, from the Philippines, shows adolescents' locked in a dog cage for violating lockdown rules.¹⁶ This evidences the perception of children's play as dangerous and of adolescents' play as problematic.

Given this clear evidence of the negative impacts of the pandemic – and measures taken in response to it – on enjoyment of the right to play, the Committee's failure to mention the right to play in its statement is particularly concerning. When viewed alongside the extensive challenges to the realisation of the right to play discussed in this thesis, it is clear that much remains to be done for the right to play to be secured for all.

¹⁵ BBC, *World At One* (27 May 2020) <<https://www.bbc.co.uk/programmes/m000jf7f>> accessed May 2020; H Dixon and G Rayner, 'Parents of teenagers who flout coronavirus lockdown rules should be fined, police told' (*Telegraph Online*, 2 April 2020) <<https://www.telegraph.co.uk/news/2020/04/02/parents-teenagers-flout-coronavirus-lockdown-rules-should-fined/>> accessed August 2020

¹⁶ M Wurth and CH Conde, 'Philippine Children Face Abuse for Violating COVID-19 Curfew: Young People Locked in Dog Cages, Coffins, Stripped Naked' (*Human Rights Watch*, 3 April 2020) <<https://www.hrw.org/news/2020/04/03/philippine-children-face-abuse-violating-covid-19-curfew>> accessed August 2020

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