

**SUPPORTING THE CHANGE OF NATIONAL
FRAMEWORKS**

TO MEET THE DEMANDS OF THE CRC

The Role of UNICEF

A Study of UNICEF Programming with a Rights-Based Approach
The Case of Brazil, Costa Rica and Venezuela

Final Report

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FOREWORD

This study on the role of UNICEF in supporting the change of national frameworks to meet the demands of the Convention has been an extremely enriching experience. It is my hope that it will contribute to the understanding of the processes of change and the role that UNICEF can play and that it will inspire other countries to try some new approaches.

The reader should be aware that this is the work of a person external to UNICEF with only limited knowledge of the internal work of the organization and that the observations contained in the report are the result of fairly brief visits to only three countries. The report does not pretend to convey the full story of UNICEF's work with a rights approach in LAC— it is rather an analysis of selected interventions whereby UNICEF has successfully supported national reform processes inspired by the Convention. There are surely many experiences in other countries that would also have deserved to be included.

In the case of Costa Rica and Venezuela, legal reform is very recent and reforms in other areas are only beginning to take place. In Brazil, in the time span of the past ten years, the process of change has advanced much further and the effects can be more clearly seen. Even so, it is rarely possible to establish a direct causal linkage between legal reform and other developments.

At this point in time, it is still much too early to assess the long-term impact of the rights approach and to determine to what extent it will produce the desired effects on the situation of the world's children. In the coming years, it will be important for UNICEF to continue the systematic analysis of the processes, the advances and set-backs, and to learn how to further improve its performance.

My thanks go to Per Engebak, Regional Director for LAC, who took the initiative to this study and gave me the inspiration and courage to accept this challenging assignment, Carlos Mazuera, Program Officer, Social Policy Unit, TACRO, who coordinated the study in the smoothest possible way, always with a warm smile, Alberto Minujin and Sawon Hong, Office of Evaluation, Policy and Planning in New York, who helped prepare the terms of reference and provided very thoughtful comments to the draft report. I also want to mention Dorothy Rozga, Program Division, New York, who contributed very specific and precise comments which helped improve the report.

Finally, I want to express my appreciation to the staff of the UNICEF offices in Costa Rica, Brazil and Venezuela who made great efforts to make my country visits useful and willingly shared their wealth of knowledge and experience in an open and frank manner. And without the excellent support of the three national consultants Guillermo Monge G. in Costa Rica, Robert K. Walker, Brazil and Ofelia Russián Curiel my work could not have been accomplished.

Elisabeth Lewin

The three countries in the study, although in many respects very different from each other, are all middle income countries that have achieved a certain level of institutional development and have a reasonable amount of public resources available. Other countries in the LAC region where a rights approach has also been developed, such as those in the Southern Cone, are also among the most developed in the region. A question that comes to mind is whether the transition to the rights approach can be made successfully also in less developed countries of the region and of the world. This question cannot be answered by this study, since no such countries were included in the analysis. It can only be assumed that where the legal framework and justice system is weak, the institutional framework less developed and national budgets more restrained, the transition would have to be more gradual and encounter more difficulties.

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CHAPTER 1 INTRODUCTION

1.1 The Convention – A Conceptual Framework

Ten years of discussion were required to construct the Convention on the Rights of the Child (Convention/CRC), but its positive effects were obvious even before its approval by the General Assembly in November 1989. Never before was there a legal document with such potential for change. However, during the first years after its adoption, the CRC was perceived more as a solemn declaration of human rights for children and a basis for global advocacy than as an instrument for new programming strategies. The emphasis was on the commitments made at the World Summit for Children and on the National Plans of Action. Child rights were not yet perceived as the conceptual and legal framework it is today.

The principal mandate of the Convention is to ensure the rights of all children and adolescents to integrated development. They all have an inherent right to life, survival and development and it is the obligation of the State to ensure conditions for the fulfillment of their rights. In practical terms this implies that the State must ensure access to basic services and equal opportunity for all children and adolescents. Rights are universal and no distinction is made with regard to the social standing of children; however, it is clear that special attention must be paid to the socially disadvantaged. The State, community, family and individuals share the responsibility for the protection and fulfillment of child rights and the Convention calls for an active role of each one of them.

The central concepts of the Convention are the inherent nature, indivisibility and interrelation of the rights. It encompasses three basic principles:

- 1) the citizenship of children and adolescents – as subjects of civil, social and political rights;
- 2) the best interests of the child - understood as a guarantee for effectively protecting all these rights; and
- 3) the principle of non-discrimination meaning that actions or omissions that deny rights on the basis of gender, race, ethnicity or nationality are unacceptable.

The CRC has been ratified by all countries in the region. This has paved the way for a process of legal, institutional and policy reform aimed at building a culture of respect for child rights. Such processes are ongoing in all countries of the region, but at different rates and intensity. By signing and ratifying the Convention, States commit themselves to bring the principles of the Convention into practice. At the same time, signatory States are provided with a framework for developing an agenda for children. Moreover, the

Convention constitutes a common reference against which progress can be assessed and results compared.

The transition to a child rights approach implies an important change of values and principles of the entire society. It has to take place in a cultural framework where children and adolescents can express their views and demand their rights, where they are listened to and respected as citizens. It is not an easy road to travel and - as is the case with any process entailing profound change – fear and resistance are encountered along the way. There is progress, but also setbacks. It is a long-term process that has only just begun.

1.2 Human Rights and Development

Human Rights constitute the foundation of the work of the United Nations and have been identified by the United Nations Charter as one of the three basic purposes of the Organization. It is therefore not an option but an obligation for all parts of the UN System to place Human Rights at the very center of their agenda. In recent years, in connection with the UN Reform the Secretary-General has emphasized once again that the advancement of human rights needs to be integrated into all principal United Nations activities and programs.¹

Indeed, Human Rights have become of increasing concern for different parts of the UN System. A case in point is UNDP which in its policy document Integrating Human Rights with Sustainable Human Development pronounces: “As a development organization, UNDP should focus on promoting human rights, primarily through support for the development of national capacity in programming countries and through sustainable human development activities. The approach.....recognizing the mutual dependency and complementarity of sustainable human development and social, economic, cultural, civil and political rights”.

As for UNICEF, in the last decade the organization has become a key actor in the field of children’s human rights. The major signal of its role in human rights came in the Convention where the organization is identified as a major partner in the implementation process and given the mandate to promote changes in member countries to comply with the Convention.² Human rights are not simply an “attachment” added to development. On the contrary, they need to inform and guide development policies; human development is only meaningful and sustainable when designed to ensure the realization of human rights.³

Besides UNICEF, several other United Nations bodies are increasingly involved in children’s rights: ILO has gained renewed interest in the area of child labor; UNHCR has adopted guidelines for refugee children, and UNECSO is developing work in the field of human rights education for children. However, a difference is that for UNICEF, the concept of child rights is not just one of many concerns, but represents the essential value of the mandate and, in fact, the identity of UNICEF.⁴

1.3 UNICEF's Mandate

In its Mission Statement in 1996, UNICEF declared that its work be guided by the standards and principles established by the Convention and mandated the organization to advocate for the protection of children's rights and strive to establish them as enduring ethical principles and international standards of behavior. In 1998, UNICEF explicitly mandated its country offices to take a humanrights-based approach to programming (EXDIR/98/004). The Convention has thus become the framework which guides UNICEF's mission, as well as its relations with governments, civil society and other agencies within the UN system. Through the Convention the focus has changed in an important way: from meeting children's needs to the realization of children's rights.

This being said, it should be understood the rights approach is not something entirely new and different. While no doubt profoundly inspired by the Convention, it is also in part an evolution of existing policies, previous experiences and lessons learned. As is stated in the EXDIR/98/004, "... rights-based programming does not mean that everything we do must change. In fact, the policies and programs of cooperation supported over the last 20-30 years are very largely consistent with what the CRC and CEDAW mandate. Adopting a human rights approach simply means that we look to the 'value-added' that the general principles and specific standards of the Conventions can provide".

The ethical attitude of the Convention implies a renewed commitment for UNICEF to intervene as an advocate for children, to stand on their side in times of peace and war, to promote consensus, encourage action, advocate in favor of the most disadvantaged and shed light on the forgotten. Thus, where there is passivity, UNICEF will recall the legal commitment made by States to abide by the Convention and ensure its implementation. When children are absent from the political or social agenda, UNICEF will act as a catalyst and promote children as a priority. When children's rights are threatened or neglected, UNICEF needs to voice its concerns and encourage action.

1.4 Adoption of the Rights Approach in the LAC Region

The Latin American and Caribbean Region (LAC) has clearly taken ahead in this process. There, tangible effects of the Convention were felt long before the approval by the General Assembly. It is worth mentioning that in several countries it was neither the governments, nor UNICEF, but civil society that pioneered the use of the Convention as an advocacy tool. In Brazil, the children's and women's movements had been fighting successfully for child rights to be included in the new Constitution adopted in 1988, so it was only natural that they quickly made the Convention theirs. In Venezuela, NGOs working for the defense of child rights, have been the main agents for dissemination of the Convention.

The seeds of a rights approach were first planted at a meeting organized by TACRO in December, 1993 in Paipa, Colombia, where, for the first time, the conceptual shift in focus was presented: from children at risk (or children in especially difficult circumstances) to children's rights. The participants were the "focal points" of the child rights area of the country offices in the region, (usually CEDC officers), staff from TACRO, and especially invited guest speakers, notably Carlos Gomes da Costa who had been instrumental in the legal reform process in Brazil. This meeting marked a turning point; never before had the meaning of the Convention been expressed in such clear terms. The need for legal reform as a first step was emphasized; assistance-type programs were seriously questioned.

By 1994, under the leadership of the new Regional Director, Ms Marta Maurás Pérez, the Convention had taken on a new meaning. The CRC was no longer viewed as just a human rights convention, but as a powerful instrument of change with respect to national child policies and UNICEF's own approach. The appointment of Dr Emilio García Méndez as Adviser on Child Rights in TACRO had decisive influence on the process and resulted in a growing number of seminars, workshops, publications and training sessions. The CRC was disseminated and its implications discussed not only within UNICEF but also with policy makers and practitioners throughout the region.⁵ In some countries, such as Brazil, change was already starting to take place.

By the mid-1990s the Convention had become the conceptual framework for a new way of defining social policies in Latin America. Its potential as a policy and programming tool was becoming clear to TACRO and the country offices were encouraged to use a child rights approach to their work and for developing new relations with the countries. At the time it was not clear exactly what this meant and how this should be done; it would take several years before new programming frameworks had been developed.

While at first, Headquarters was somewhat slow to respond to the idea of a rights focus, things started to change with the new Executive Director, Carol Bellamy, who took office in 1995. Relatively soon, the rights-based approach had come to prevail also at Headquarters, as reflected in UNICEF's Mission Statement of 1996

Third Ministerial Meeting on Children and Social Policy in Latin America in Santiago, Chile, 1996, was a milestone where it was agreed to expand the Summit Goals to include the establishment of a culture and the institutionalization of the Rights of the Child. An equally important event was a Seminar on Public Policy and Children in Costa Rica in July 1997 organized by TACRO. It was designed with the objective of updating the staff on the main socio-economic trends and social policy models and to examine the consequences for UNICEF programming. It counted with the participation of outstanding international speakers.

Over the past four to six years, some offices in the region have been making great strides to operationalize the rights approach. A remarkable transition has taken place - from a traditional, sectoral approach in programming to a child rights approach focusing on

national processes of legal, institutional and policy reform. The rights approach is still in the evolutionary stage. Within UNICEF, Latin America, and perhaps Brazil in particular, has played a leading role in this process.

1.5 Systematizing and Learning

As the experience in this new approach to programming had not yet been systematically assessed and documented, TACRO in consultation with Headquarters decided to engage an international consultant to undertake a study in the first quarter of 2000. Three countries were selected by TACRO on the grounds that the transition to a rights approach was well under way and could show tangible results. They were Brazil, Costa Rica and Venezuela. Besides having valuable experiences to share, there is an advantage that the three countries differ significantly in terms of territorial size, population, history, political, economic, social and cultural development and the roles of the State and civil society. This makes it possible to analyze UNICEF's new role in quite different contexts. The focus of the study was to be on the role of UNICEF in terms of its support to legal, institutional and policy reform and social mobilization.

The overall objective of the study is to further advance the understanding of the processes of change and the role UNICEF can play in countries where the Convention is being used as a programming framework. The specific objectives of the study are:

- to examine the changes that have taken place in terms of legislation and social policies in the three countries since the adoption of the Convention;
- to understand the processes through which these changes have occurred;
- to document the changes that have followed legislative reform in terms of public budgets, institutional capacity-building, training of personnel and public education;
- to assess the role that UNICEF –at the HQ, regional and country levels– has played in bringing about these changes; and
- to share the lessons learned with other countries, especially in the LAC Region.

The main audiences of this report are country offices in the LAC region, especially those preparing new Country Programs (CPs), program officers and decision makers at Headquarters and UNICEF offices in other parts of the world, board members, donor agencies, specialized UN agencies, NGOs and others interested in child rights.

The study is based on a review of extensive documentation made available by TACRO, UNICEF country offices and national governments, institutions and NGOs, visits to the three countries, and numerous interviews with national counterparts and allies, as well as with UNICEF staff.

The study was undertaken by Elisabeth Lewin from Sweden with the support of a national consultant in each of the countries visited, selected by the UNICEF country office. They

were Mr. Guillermo Monge G. in Costa Rica, Mr. Robert K. Walker in Brazil and Ms Ofelia Russián in Venezuela. The national consultants prepared the program, collected background information, accompanied Ms. Lewin during her visits and interviews, discussed the issues and wrote the country reports. These reports are highly recommended reading, as they contain more specific accounts of experiences at the country level.

It should be pointed out that this is not an independent evaluation, but rather a search for successful experiences and “good practices” by means of a process whereby the consultants have been guided by UNICEF itself. More specifically, the three offices visited have helped the select national processes in which UNICEF has played a significant role. Those processes are analyzed and presented in this report.

A study of this nature represents an effort on the part of the region and especially the three countries included in the exercise. The justification for this effort is the expectation that the study will contribute to the organizational learning process in UNICEF and to the methodological development of the rights-based approach to programming.

CHAPTER 2 MOVING TOWARDS A RIGHTS APPROACH IN LATIN AMERICA

2.1 *Latin America in the New Millennium*

Latin America holds the sad honor of having the most inequitable income distribution of any region in the developing world.⁶ Poverty is still a reality in all countries, with the fraction of the population living in poverty ranging from 15% to over 50%. Poverty levels in the mid-1990s were higher than in the mid-1980s. Children and women are clearly over-represented in poor and very poor households. A zone of social and economic vulnerability has been formed and is growing in absolute and relative terms. It includes the structural poor, the new poor and broad sectors of the middle class.⁷

It has now become evident that prevailing social economic and policies not only have failed to provide a solution but have aggravated Latin America's main problem: extreme inequality in the distribution of income and wealth. Economic and social exclusion is becoming a reality for substantial segments of the population, e.g. families who subsist in high-risk circumstances, with educational and cultural barriers, difficulties in access to basic services etc. Gender inequity is another obvious reason for exclusion or vulnerability. Social exclusion is a result of the lack of comprehensive protection policies and insufficient social investment in services for children and youth. Added to this is slowness on the part of governments in initiating and implementing institutional reform and difficulties in meeting new social demands. Furthermore, civil society has not had the strength to play its part in promoting, demanding, designing, implementing and monitoring social policies.⁸

In short, the reality of Latin America demonstrates strongly interrelated structural limitations, such as social exclusion and anti-democratic social relationships, that makes it difficult to comply with the basic principles of the Convention and the rights set forth therein. A move towards a more inclusive, universal-type model of development is imperative if the enormous social divisions and inequalities are to be mitigated. Reforms of the education, health and social services systems are urgently needed throughout the region.

Although the orthodox policies still dominate in Latin America, there are signs that a new paradigm is emerging introducing a new model of citizenship sometimes called "emancipated citizenship". The central issue here is demand for social equality. By this is understood equal opportunities and equal access to socially and economically important goods. Equality implies equity, i.e. fair and proportional access to the benefits and costs of development, as well as re-distributive justice based on collective solidarity.⁹ For people it means expanding their choices and their spaces.

Public policy has however undergone positive changes in some countries of the region,

such as Brazil and Costa Rica. In the past, Latin American social policy was epitomized by a centralized model based on state monopoly in which the citizens played a passive role and social policy reacted to pressure from social groups. In the new model, a range of actors is involved in the design and implementation of social policy: the State, civil society, NGOs and the private sector. Within this scenario, the citizen plays a much more active role. Social policy is intimately linked to the extension of democracy and civil society is a critical partner that exercises a scrutinizing role and exerts social control.

A human rights approach requires a new political culture and another type of relations between the State and civil society. The subject of citizenship is emerging as an important theme. There are essentially two rival models of citizenship currently disputing the conceptual orientation of social policy in Latin America: the assisted citizenship which is basically the traditional model and the emancipated citizenship model which is based on social equality, redistributive justice and collective solidarity. In the latter case people are no longer viewed as simply passive objects of social policy, but as active participants in shaping the policies that affect them. 10

One of the greatest challenges facing Latin America at the present time is the move from a representative to a participatory democracy. The trend is headed in this direction in the more progressive parts of the region. As a case in point, the Constitutions of Brazil and Venezuela explicitly prescribe and create conditions for participatory democracy.

2.2 *Pre-Convention Public Policy, Legislation and Judicial Practice*

2.2.1 Public policy

In the past, public policy with respect to children has rarely been applied universally; the tendency has been to seek alternative solutions for poor children or children in adverse social circumstances, the so-called “minors”. Solutions have been oriented towards the control and “protection” of these children which often has resulted in separation of the child from his/her family and social network. This phenomenon can be attributed to the inability of social programs to respond to the diversity of needs of children, as well as to the culture of exclusion. Parallel to public policies for health and education for “children”, an alternative system has been developed for “minors”, functioning as a substitute for the family. These children have much too often been placed in institutions thereby “relieving” the family and community of their responsibility.

As mentioned in the preceding section, the prevailing orthodox public policies inspired by the Washington Consensus have not only aggravated, inequality in the distribution of income and wealth, but have also generated vulnerability and exclusion for large segments of the population. The macroeconomic policies have given priority to economic growth and social development has become a second concern. The low rate of social investment in children and the lack of comprehensive protection policies have resulted in deep-seated