

Defence for Children International (DCI)
International Symposium
25th Anniversary
Geneva 22 November 2004

Is the Rights-Based Approach the Right Approach?

Speech by Nigel Cantwell

I am always concerned about any concept that becomes a kind of absolute ideological fortress, one that you dare not question, even tentatively, without putting your professional survival on the line: de-institutionalisation, for example, or the “Children First” slogan, or “child participation”... So it seemed to me that, after several years now of working in the environment of one such unassailable bastion – the rights-based approach – we should take a step back and look more closely at what it has actually implied and how it fits into what we are trying to do in regard to the rights of children.

Let me begin the exercise by delving back into the past for a moment, just to see where we have come from over the past 25 years or so in this field of children’s issues.

“Children’s rights” in the Seventies

DCI and many of the other organisations now so connected with the implementation of the Convention on the Rights of the Child were founded well before the treaty was adopted, but this is something we often forget. So we also tend to forget that there was no clear basis for children’s rights action at the time that these organisations were established. The pre-Convention era was one of ad hoc charity to children: the charity approach of giving to the deserving. Children’s rights as a concept was surrounded by confusion: Hillary Rodham Clinton summed it up neatly at the time by admitting that children’s rights was still “a slogan in search of definition”. Indeed, a variety of manifestations of so-called children’s rights and self-styled children’s rights work – in a number of industrialised countries at least – in the Seventies contributed to sowing confusion: “Kid Lib” (i.e. children’s liberation) for instance, or “Pupil Power”. They were very much founded on pitting children against adults (parents in the first case, teachers in the second) rather than taking a “human rights for all” perspective. In particular, there was tremendous adult manipulation of what were then being termed as children’s rights. Maybe this was an unavoidable step at a time when adults alone had a voice and children’s issues had no priority. But it certainly did not provide an auspicious context for acceptance of a debate on “the human rights of children”.

The lack of standards in the Seventies was compounded by a very distinct lack of data on most children’s issues. We have now come to realise the fundamental importance of hard data for monitoring, effective advocacy and implementing the Convention, but at that point we had very little information indeed on anything bar the “traditional” subjects of health and education.

But most significant of all, perhaps, was the fear of confrontation when working for children. You didn’t confront; you simply took on the jobs that others, including States, were not prepared to do. You didn’t stand up for children on the basis of accepted principles – in large part, no doubt, because those principles weren’t there. You simply tried to provide services to children where they were lacking.

This fear of confrontation was very real. For much of the Seventies, I worked at the now-defunct International Union for Child Welfare, which was based in Geneva and was by far the world's biggest federation on children's issues. The IUCW had a stated policy of "active neutrality". I was never quite sure what "active neutrality" actually allows – or requires – you to do, but it certainly didn't include taking a strong stand for children and their rights...

From "children's rights" to "the human rights of children"...

When the opportunity came along to work on drafting the Convention on the Rights of the Child, in essence what we tried to do was to transform, very radically, that inauspicious environment. We set out to make children's rights an integral part of human rights, whence the phrase that we coined: "the human rights of children". First of all, we wanted to do away with the idea of children being pitted against adults in terms of their rights. But we also wanted to get away from the idea of children being somehow "special". Rather, we were promoting the idea that children were just as important as any other human group – whether defined by age, sex, or situation – but, perhaps precisely because we were working in a human rights context, not *more* important. Not only are all human rights intertwined, but also all subjects of human rights are interdependent, and, surely, absolutely equal. I would find it difficult to take the line that children need to be given, in general, some kind of special hierarchical importance within the human rights framework, as opposed to being granted certain additional rights catering to their special situation.

... And the rights-based approach

Although the Convention was being developed during the Eighties, was adopted at the end of the Eighties, and came into force at the very beginning of the Nineties, at no point during that process did we encounter the idea of a rights-based approach as such, whether in the field of children's rights or in that of human rights in general. The rights-based approach is indeed very new: to all intents and purposes, it is only since the 1993 Vienna Conference that there has been explicit discussion of the rights-based approach as a concept.

At the same time, the elements of the concept are of course not completely new. In the Sixties there was already the idea, for example, of consultation and participation in the sphere of community development. The approach to community development had essentially been a paternalistic one, founded on charity, and I well remember how we were introduced to the then novel idea of consultation with the putative beneficiaries of development work. Clearly, consultation and participation are essential components of the rights-based approach as we know it today, but the rights-based discussion, and particularly the revered status that the rights-based approach has now achieved, is a far more recent phenomenon.

Virtually all development organisations have indeed taken on the right-based approach in their mission statements and in their programming. The UN as a whole has been promoting the idea of the rights-based approach since "Vienna", and in that context UNICEF officially took it on board as of 1998. I think it is fair to say that there was, perhaps not surprisingly, a great deal of confusion as to what the whole idea was really about, and how it would change the approach of the organisation, particularly in its work at field level. No little energy was put into informing staff and discussing the implications, by no means just in UNICEF of course, but also, for example, in bilateral donor organisations and NGOs, in an effort to secure their support for the new policy directions that were being taken.

A rights-based approach to what?

Whether or not this sensitisation process has been consistently successful, it is clear that the rights-based approach has moved forward considerably – to such an extent that we now find this approach applied not only to development and indeed to development co-operation as such, but also to very specific issues: the rights-based approach to education, to reproductive health, to poverty eradication, to literacy projects, to realising gender equality... I have even seen a document on the rights-based approach to landscape conservation, but perhaps the most surprising one that I came across was a document put out by the CATO Institute in Washington D.C., entitled: “The Rights-Based Approach to Privatising Fisheries”. I thought that was a rather nice extension of the concept.

It is precisely the fact that one can envisage privatising an industry on the basis of this approach that pinpoints the problem: the rights-based approach has been applied only to areas of *programming*, but not to *people*. Therein lies my essential concern when reviewing the progress made through the rights-based approach until now. And it is the only reason that the title of this presentation questions whether it is the right approach.

We have been brought to accept the rights-based approach as a guide to process: how we go about programming and planning. It is essentially based on consultation, empowerment, and accountability, and of course I would not suggest that this is anything but good.

But the problem is that we now don't seem to have a rights-based approach to *children*, even though I believe that we certainly had this when drawing up the Convention. At that time, we were trying to put children firmly on the human rights agenda. We were trying to ensure that experience in overall human rights work could underpin efforts in favour of children. We were looking to see how to make good use of the methods used more or less successfully by established human rights organisations such as Amnesty International, Human Rights Watch, the International Commission of Jurists and others who were involved closely in the work to develop the Convention.

So near and then so far...

Since then, however, what the Children's Rights Movement is doing has in many cases moved away from the approach taken by human rights organisations. I feel that the Movement has somehow tended, intentionally or not, to distance itself from the human rights mainstream, and that naturally concerns me. I am not quite certain why this has happened, but some of the developments that have taken place are clearly marked by this distancing.

One is exemplified by the “Children First” slogan, which I have never liked and always resisted. In no way does this slogan reflect a human rights-inspired approach to children, because it puts them on a kind of “more equal than others” pedestal. I see it as characterising more a charity-based approach to children, where sentimentality over children's vulnerability leads to facile “separate” responses: never mind about human rights, let's help children. In terms of the intentions of those behind the slogan, this is possibly an unfair verdict. But in the human rights field in which we are working, the message it puts over is exactly the kind of approach that we need to be combating.

Turning to concerns expressed about children's situation, we can take the example of the Committee on the Rights of the Child, in a previous incarnation and, I hasten to add, well before it was chaired by my fellow-presenter Jaap Doek. What concerns were being broached within that Committee in the Nineties? Very often, I would submit, concerns of amazingly

minor importance: witness to begin with the counter-productive detail and length of the Reporting Guidelines that the Committee had drawn up in the vain hope that States Parties would – and, in particular, could – respond to questions covering all children’s issues.

Thus, it is quite possible that, in terms of discrimination, there may be some importance in the fact that there are differing ages at which a human being may get into a contractual relationship, be considered penally responsible, get married, have sexual relations, etc. I don’t doubt that it could also be of some importance to know that children living in an urban area are in general, in terms of access to school and health services, better off than those who live in a rural environment (though at the same time, I could hardly imagine that it could be any different in any country, otherwise the countryside would not be the countryside...).

But while tentatively accepting this, I would strongly contend that these issues are somewhat peripheral to the main discrimination debate, very peripheral to major children’s rights problems, and utterly negligible on the global human rights scale. Yet the prominence given to questions such as these in the Reporting Guidelines often led to some of the more important human rights situations for children being virtually sidelined in reports and debates: arbitrary detention and other protection issues, for example, that are not only covered towards the very end of the reporting guidelines, but have frequently been almost snuffed out in the Committee’s discussions with a State because of protracted “debate” on marginal issues.

You don’t get this, as a rule, in the Human Rights Committee, and thankfully current practice in the Committee on the Rights of the Child has largely remedied the problem, but it was yet another manifestation of the way that children’s rights have been de-mainstreamed from the human rights agenda, at least in the way we had conceived that agenda in the Eighties.

A seduction process

What about trying to (re-)integrate children’s rights into human rights concerns at the present time? Earlier this year, I took part in a meeting at the Council of Europe on the development of the forthcoming treaty on action against trafficking in human beings. We’ve worked solidly in the last 20 years to ensure that children’s rights are part of human rights, but we had an extraordinarily disappointing reaction from some governments to certain purely rights-based proposals we were making for inclusion in the treaty. This was another indication to me that children’s rights have not yet been integrated into the human rights agenda. And I start to wonder why. What’s wrong with our approach? What’s wrong with our advocacy on behalf of children’s human rights?

Let me hazard one guess in response: the revered rights-based approach, because it concentrates on process, has often started to seduce us away from the actual goals of the rights we should be seeking to promote and protect. It seems to me that a very good example of this is the degree of importance – not to say inviolable sanctity – that is now given to “child participation”, in good part at least in the name of process founded on the rights-based approach.

Child “participation”: part of the problem, not part of the solution?

Two days ago, on 20 November, I was at the Palais Wilson for a meeting to mark International Children’s Rights Day. The representative of the Office of the High

Commissioner on Human Rights, without questioning child participation as such, noted that the concept was still very open not only to resistance, but also to misinterpretation and manipulation. Yet we – or I and probably she at least – had thought that “participation” rights had been quite well defined in the Convention. Basically, the provisions in question reaffirm existing human rights to make sure that children benefit from them as well. Thus, a child – like an adult – has the right to express views on all matters affecting him or her, and to have those views taken into account. A child – again like an adult – has the right to freedom of expression, to manifestation of religion or beliefs, to freedom of association and peaceful assembly.

I am fairly sure of my ground when defending those rights as far as adults are concerned, and I was similarly sure as regards “the intentions of the legislator” concerning children. But manipulation, coupled with this infatuation with “rights-based process”, has largely diverted our attention from the true substance of the human “participation” rights of children that we should be promoting and defending. It is leading us along a totally different, and usually hardly inspiring, path, accompanied by the mantra that everything done in the name of “real” participation is positive, progressive and unquestionable.

One result is that, instead of seeing children up on a stage during an adult conference singing songs to entertain the folks, as in days of old, now we’re seeing children up on a stage making statements – but essentially, if we are even minimally realistic, still to entertain the folks. In all honesty, the reaction of most of the adult audience is, invariably, exactly the same: “Weren’t the children wonderful!”. But what are these children’s expectations when they make the statements? If they have none, it would be a pity, but if they have any, they need to know from the start that the likelihood of them being realised is as close as you can get to zero. In other words, it’s an alternative form of tokenism; maybe a slightly more constructive form, but it still means, deep down, that in those circumstances we continue to look on children more as entertainers than as partners.

Maybe that in itself is not too disastrous. But what is frightening is that all the hype and spin about supposedly “listening to” children in this way is seriously distracting us from our main tasks on “participation”: making sure, for example, that children are consulted and heard when there are plans to separate them from their parents, or when deciding on such-and-such a care option, or when they are subject to violence in the hands of the police; and ensuring that they are not imprisoned simply for something they wrote. Once we have put sufficient energy into getting systems and safeguards in place that enable children to “participate” where it counts – i.e. in securing their human rights – maybe we could justify the superfluous luxury of getting a couple of them onto the podium of the UN General Assembly to ask for peace, which would seem to have scarcely more to do with human rights than posting a wish-list to Santa Claus.

And this, in sum, gives us a good idea of why a number of human rights organisations are looking at the antics of certain of their child-focused brethren and wondering, not without reason, if everyone is on the same planet.

To children as well!

I want to end by noting too that the ongoing negative ramifications of the charity approach have by no means yet been eliminated by taking on the rights-based approach. The charity legacy is still very much in evidence today, and no more so than in the image we give to the general public who are invariably our direct or indirect donors. We have made very little progress in terms of the way we try to secure funding for rights-based projects. We still see in

the publicity that same sentimentalism with regard to children that has for so long characterised giving to organisations. Even those organisations that are very much rights-based, human-rights oriented are still relying on support that is secured via the charity approach.

This is, to say the least, unfortunate. And it only adds to my basic concern: of course the rights-based approach is the right approach, but not just a rights-based approach to programming – a rights-based approach to children as well.

© 2004 Nigel Cantwell