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Law Reform, Child Maltreatment and the UN Convention on the Rights of the Child

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Abstract

Scholars and practitioners stress the need for systematic research on the implementation of the UN Convention on the Rights of the Child (CRC) and its potential impact on children's rights. Our study focused on one aspect of implementation – law reform. Drawing primarily on reports to the CRC Committee for 179 countries, results show for most countries, implementation is limited and focused far more on child-welfare than child-rights based legislation. The relationship of measures of law reform/legal regime (most notably, the existence of customary law and laws banning corporal punishment) to children's experience of rights, child physical abuse and mortality, is analysed and theoretically grounded.

Keywords

UN Convention on the Rights of the Child – Implementation of the UN CRC – law reform – children's rights – child maltreatment – corporal punishment – child abuse – child mortality – customary law – measures of law reform – legal change – legal regime and children

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Introduction

United Nations Convention on the Rights of the Child: Shifting Paradigms

The UN Convention on the Rights of the Child (CRC) follows in the United Nations' tradition of recognising and addressing widespread manifestations of discrimination, violence and unequal rights based on gender, race, ethnicity, age and other social categories. The preamble of the CRC (1989) makes clear that the 'recognition of the inherent dignity and of the equal and inalienable rights of *all members of the human family* is the foundation of freedom, justice and peace in the world' (emphasis added). As per Article 3, 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. The CRC and its implementation represents one of the most critical vehicles for extending human rights to children.

As Cohen (2002) states, the CRC goes beyond what has been referred to interchangeably as the traditional "child protection, development, welfare or caring" paradigm of adult-child relationships. The CRC moves children from the status of objects to be cared for, to persons with rights of their own that must be articulated and enforced, i.e., from a *child welfare protection model* to a *child rights-based model*. The child welfare-protection model focuses on a sentimental approach of "*survival and protection*", but does not challenge the structure of adult oppression of children or adult privilege, particularly as it relates to parents and the family. Indeed, García Méndez (2007:104,106) documents the role that *welfare-protection models* play in law in reinforcing oppression, *legitimizing the subordinate position* of women and children: 'the protection of persons, as opposed to the protection of the rights of persons, has proven to be the most efficient mechanism to legitimize and consolidate the "incapacity" of both women and children'. Grounded in the child welfare-protection model, a number of the "World Summit for Children" goals such as maintenance of high levels of immunisations or universal access to safe drinking water are general *human development goals*. Whilst important to achieve for all persons in society, these goals are no more specifically related to eliminating discrimination against and oppression of children than they are for eliminating discrimination against and oppression of women or minorities. At best, child welfare-protection paradigms can achieve advances in individual legislation, for example, promoting infant nutrition, immunisations or even related decreases in infant and maternal mortality. Whilst important for basic survival and care, they do not extend important rights to children that are currently guaranteed to adults, such as equal protection from physical violence. The latter requires a shift to

a child rights model that is instilled within the CRC. Through its implementation, an evolution of the rights of children in which they are seen as a group and as individuals with rights that extend beyond basic needs and protection shall potentially take place.

With regard to the evolution of the constitutional status of children in law and movement from a child welfare-protection model toward a rights model, Alston and Tobin (2005:24–32) outline three stages. The first stage is the "*invisible child*" constitution with no mention of children. The second stage is the "*special protection*" constitution that takes some account of children viewing the State as "protector" – a welfare position. Echoing Cohen, Alston and Tobin state that this approach is different from the "rights based" approach of the CRC in that the "*welfarist*" approach includes: (a) a paternalistic emphasis on "protection" of children by the State rather than children's rights; (b) children's protections are viewed from the perspectives of "the parents and it is often their (*i.e., parents'*) rights that are the major concern"; (c) the range of child-related issues covered is extremely limited compared to the provisions of the CRC. The third stage is the "*children's rights*" constitution, i.e., constitutions adopted or revised after the ratification of the CRC in 1989. Whilst these constitutions vary on which rights they include, they do provide a focus for the transformation of the legal regimes as nations attempt to "incorporate and harmonize law" with the principles and values enumerated in the CRC. Alston and Tobin (2005:26) note that whilst the legal discourse has shifted from one of paternalism to one of children as bearers of rights and consequent obligations of government and adults toward children, the "special protection" approach still lingers, maintaining 'the traditional agenda of care and protection issues, albeit now canvassed in the discourse of rights.'

The legal regime envisioned by the CRC provides a rights-based set of principles that has the potential to challenge the structural relationships of discrimination and inequality between adults and children in the family, schools, institutions and communities. Moreover, similar to violence perpetrated against women by husbands (Cowan and Schwartz, 2004), the unequal power distribution by gender and age within the traditional family provides a unique potential for oppression and violence against children, obfuscated by such concepts as "*privacy of the family"* making it more difficult to protect from violence or extend rights to children. The fact that parents are the most common perpetrators of violence against young children makes this even more dangerous. As history shows, *legal protection from violence and legal support for the enhanced status and equality* are perhaps the most critical factors associated with any group's movement out of oppressed status (Bitensky, 1998). The CRC specifically extends to children the protection from all forms of violence in all contexts, including the home. As a whole, the CRC challenges taken-for-granted

assumptions about adult-child relationships in some areas similar to what the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) did for women and the International Convention on the Elimination of All Forms of Racial Discrimination (1965) did for minority groups. Again, this is a *potential* which must become actualized in the lives of children and not remain solely in the rhetoric in constitutions and legislation.

Translating the potential of the CRC and legal change it requires into reality for children is a difficult process. Alston and Tobin (2005:2) acknowledge that whilst it is easy to find superlatives to describe the CRC's place amongst international human rights conventions, it is just as easy to '... recite a litany of terrible abuses which continue to be committed against children, some of which seem to be even more chronic and less susceptible to resolution than they were before the Convention existed'. Years after the ratification of the CRC, research including the *World Report on Violence against Children* (Pinheiro, 2006) and *Hidden in Plain Sight: A Statistical Analysis of Violence against Children* (UNICEF, 2014) makes clear that violence against children globally is widespread, underscoring the need for research on the implementation process and action at all State levels (UNICEF 2004: vii).

Implementation of the CRC

The CRC states in Article 4 that: 'State Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention.' As the Committee on the CRC explains:

> When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction (Committee on the Rights of the Child 2003: para.1).

The Committee has issued guidelines for countries reporting on implementation of the CRC (1996, 2005, 2010, 2015), including at least eight interrelated General Measures of Implementation (GMI) that all States parties (SP) are required to report on.[1] One of the GMIs involves *law reform* and as Alston

1 The eight GMIs as summarised in the IRC report (UNICEF 2004:3) include: (1) Law reform of existing legislation and new legislation and judicial practice; (2) Independent National Institution for Children's Rights (Children's Rights Ombudsperson Office); (3) Effective child-rights data collection mechanism and analyses to monitor implementation; (4)

and Tobin (2005:9) observe: 'While there are many different ways in which children's rights can be promoted and protected, the establishment of an appropriate legal framework at all levels is unquestionably a central element'.

Committee Guidelines (1996) asked governments to report on the following aspects of law reform in their periodic State Party Reports (SPRs):

> 1996 Guidelines for Periodic Reports: General guidelines for periodic reports: 11/20/1996.
>
> Para 12: States parties are requested to provide relevant information pursuant to article 4 of the Convention including information on the measures adopted to bring national legislation and practice into full conformity with the principles and provisions of the Convention, together with details of: Any comprehensive review of domestic legislation to ensure compliance with the Convention; Any new laws or codes adopted, as well as amendments introduced into domestic legislation to ensure implementation of the Convention;
>
> Para 13: Please indicate the status of the Convention in Domestic Law: with respect to recognition in the Constitution or other national legislation of the rights set forth in the Convention; With respect to the possibility for the provisions of the Convention to be directly invoked before the courts and applied by national authorities; In the event of a conflict with national legislation.
>
> Para 14: In light of Article 41 of the Convention, please indicate any provisions of the national legislation which are more conducive to the realization of the rights of the child.
>
> Para 15: Please provide any information on judicial decisions applying the principles and provisions of the Convention.
>
> Para 16: Please provide any information on remedies available in cases of violation of rights recognized by the Convention.

The Committee guidelines relating to law reform have changed over the years. For example, revisions issued in 2005 reduced substantially the specificity

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Allocation of resources to children to the maximum extent possible; (5) Education, training and awareness-raising on the CRC and children's rights; (6) National plan for implementation of the rights in the CRC; (7) National body to coordinate activities to implement the CRC; (8) Involvement of civil society organisations, including children, in the implementation of the CRC. Others have been added over time such as the State's need to implement the CRC throughout its territories regardless of the degree of decentralisation and to monitor any privatisation of services to ensure that children's rights realized.

required in the earlier guidelines (see Committee on the Rights of the Child, 2005, CRC/C/58/Rev.1). However, the 1996 outline of what the Committee regards as essential to the implementation of the CRC with respect to law reform has framed the parameters of pre-2006 reports to the CRC used in the research reported here, as well as subsequent research by NGOs.

Conceptual Complexity in Understanding Prior Research on Law Reform and the CRC on the Lives of Children

Whilst law reform is foundational in translating children's rights embedded in the CRC into practice, it is also one of the most complicated to study as there are a myriad of ways that countries can facilitate and impede the domestication of international treaties at multiple levels, and this will differ within and across regions of the world. Reports from the UNICEF Innocenti Research Centre (IRC), the primary source of early information on GMIS including legal reform (UNICEF 2004, 2006, 2007), make clear that there is a lack of reliable data on law reform to implement the CRC and the impact of reform on children's lives, noting the pressing need '…to document and monitor the actual situation of children and the impact of laws and programmes designed to protect children's fundamental rights'(UNICEF 2006:4).

Of the relatively few studies available, most are conducted or sponsored by NGOs (UNICEF in particular) and often in non-refereed outlets. The latter hampers efforts to integrate or build on prior work. Also, as expected, most are written from a legal perspective by those trained in the law. That is valuable for legal analyses but makes it difficult for social scientists attempting to conduct research in this area in at least two ways. First, legal concepts and terms are relatively inaccessible, compounded by the fact that international law is an especially complex and specialised field. (We attempt to "translate" terms for the social scientist/layperson and find consistency across concepts.) Second, basics for research to build on from a social science perspective are scarce, for example, defining concepts and operationalising variables, attending to conceptual consistency within and across reports and theoretically grounding findings. Regarding the latter, whilst notable exceptions anchor their analyses of law reform within theoretical frameworks such as human rights development or the subordination of women and children (e.g., García Méndez, 2007; Goonesekere, 2007), most are rich in detail but primarily descriptive from a social science perspective.

Of the previous studies on law reform, most focus on select aspects of implementation for a small subset of countries within a region (such as Latin

America) or within a type of legal system (such as civil vs. common law). The IRC reports provide the basic framework of key indicators for our review because they include countries across different regions, attempt to provide the broadest overview of law reform, and set the discussion in relation to Committee guidelines. Their work is based primarily on 'documentation generated by process of reporting to the Committee on the Rights of the Child' (for example, all State Party Reports, the Committee's Concluding Observations, NGOs reports), although supplemented by information from UNICEF field offices and several expert meetings for a subset of 52 countries (UNICEF 2007: 3).

Summarising the most important indicators of law reform provided by these IRC reports into categories is not straightforward as their goal was to describe as broadly as possible any law reform that had occurred. In the interests of conceptual clarity, the general term *"law reform"* is often used in the prior literature to describe most generally all aspects of the legislative, judicial and political processes involved in implementing the CRC in the State's legal system. *Implementation of the CRC* regarding the GMI of law reform most fundamentally is defined as giving *the rights granted children* (*principles and provisions*) *in the CRC the force of law in a country – i.e.,* the rights in this international treaty must become part of the country's legal system. This process of translating the CRC into national law is often referred to as *"incorporation"* of the entire Convention or only select provisions into the legal system (also referred to as *"domestication"*). Once a right (provision/principle) in the Convention has been given the force of law, children and child advocates (NGOs) can use these laws to begin the process of securing these rights in children's lives via courts, agencies, and other means.

The overview in the IRC reports of 'the process of law reform' (UNICEF 2004:3) outlines three primary ways to give the CRC the force of law in a country. These vary in *extent* (full or partial incorporation) and *level* (national legislation and/or constitutional order). Regarding *incorporation at the level of national legislation*, the reports distinguish between two major types. The first way involves '*direct or full incorporation,*' i.e., a country incorporates the Convention, the treaty in its entirety, into national legislation. This can be done in three ways but the vast majority do so by '*automatic incorporation*' of the CRC (i.e., self-executing) '... by existing constitutional principles in the country's legal regime regarding the status of international treaties in relation to national law'. Regarding the other methods, although rare, direct incorporation can also occur through *constitutional reform* relating to national law; and 'by legislation adopted specifically for that purpose' (p. 3).

As outlined by the IRC reports in reference to countries which do not automatically incorporate, a second major way to give rights in the CRC the force of law at the level of national legislation is '*legislative incorporation and reform*'

referring to processes of *partial incorporation*. Whilst this method can lead to direct/full incorporation in rare cases as indicated above, this process of partial incorporation refers to the practice of incorporating select provisions of the CRC into national legislation over time (UNICEF 2004:3; 2007). This might include (1) enacting new laws to incorporate select principles and provisions in the CRC as well as reforming existing laws on children to conform to/reflect select provisions in the CRC; and/or, (2) enacting a new or reforming an existing *'comprehensive children's law or children's code'.* Findings from the IRC reports indicate that the prevailing trend among countries has been the partial incorporation, also referred to as the sectoral approach to law reform (UNICEF 2007: 103). Regarding both sectoral reform and comprehensive laws/codes, countries varied on the extent of reform within and across rights, and more importantly, which specific principles or rights in the CRC were incorporated, ranging from a primary focus on children's right to health care (Article 24) to incorporation of general principles such as 'best interests of the child' (Article 3). As would be expected, greater progress was found for incorporating provisions that fit within the traditional welfare-protections framework such as health (e.g., frequent focus on laws on immunisations) than those more child rights focused such as children's civil rights to privacy, freedom of expression, or protection from violence and abuse by all caretakers (UNICEF, 2006). Finally, as discussed in more detail below, whilst the IRC reports often discuss the two processes of direct and partial incorporation at the level of national legislation as distinct, it is also recognised that this process of legislative incorporation and reform is not just a way to give provisions in the CRC the force of law in countries that do not incorporate the Convention automatically, but rather is argued to be necessary for all legal systems if children are to realise rights in the CRC (Goonesekere, 2007; UNICEF, 2007).

Both of the above are ways to incorporate the CRC into domestic legislation. However, as outlined in the IRC reports, a third important way to give rights in the CRC the force of law involves '*constitutional-order incorporation and reform'* which refers to incorporating 'provisions on the rights of the child' in the CRC into the constitution of the country. Ways to do this include incorporating as part of a new constitution or as an amendment to an existing constitution or decisions of the Supreme Court or Constitutional Court (UNICEF. 2007:13; UNICEF, 2004:3). This is separate from and goes beyond reform to incorporate the CRC (or select provisions) into domestic legislation (as discussed above) by incorporating provisions of the CRC into the 'constitutional order' – i.e., law at the highest level (UNICEF, 2007:13–15). As would be expected, few countries have been found to have incorporated even select provisions of the CRC into their constitution compared to national legislation, although at both

levels, reforms are more common for traditional welfare-protections. Similar to incorporation in national legislation, the entire Convention or only select provisions can be incorporated into the Constitution, although the former is extremely rare.

In addition to the level and extent of incorporation, consistent with Committee requests on the '*status of the Convention in domestic law'*, the IRC reports describe the importance of examining the impact on processes of law reform of aspects of the structure of a State's legal system as relates to the status of international treaties in civil vs. common law countries. The first aspect was discussed above in the section on extent of incorporation, i.e., whether the CRC is *automatically incorporated* into a country's domestic legislation by existing constitutional principles – *self executing*. The second is whether provisions/principles in the CRC can be *applied by and/or invoked before the courts*. The third aspect concerns the position the Convention holds in the *hierarchy of legal norms* in the event of a conflict with existing domestic legislation. The Committee sees as ideal, direct/*automatic incorporation* of the Convention into domestic law where provisions can be applied by and invoked before the courts and the Convention prevails if there is a conflict with domestic legislation or practice. However, they make clear that '(i)ncorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention' (Committee on the Rights of the Child, General Comment No. 5 General Measures of Implementation, CRC/GC/2003/5 ¶20). In other words, even if the entire Convention is automatically incorporated into national law, legislative review including enacting new laws and reforming existing laws is still required, pointing to the complex interconnections between these major processes.

The number of different ways to incorporate the CRC into a nation's legal system, the complex interconnections between and among them, and the different legal structures within which the implementation takes place make comparative research in this area quite difficult. Adding to the difficulty of this analysis, implementation of the CRC cannot be assumed for any types of reforms made or the status of treaties in principle, given the intricacies of many other aspects of the law including factors such as State Party Reservations, the existence of traditional/customary/religious law, placement in the hierarchy of legal norms, the role of Parliament-legislators and the judiciary, etc. in bringing legal change into the reality of children's lives.

Recent commentaries outline these difficulties. To begin with, as recently summarised by Ahmad (2013:8), *in monist systems*, treaties are regarded as self-executing (*automatic incorporation*) i.e., 'do not require any subsequent

legislation to give them force of law' although approval of the legislature has been secured before ratification; *in dualist systems*, 'contracting by treaty does not render the treaty part of domestic law. It is required that the State enact an appropriate legislation to give it force of law domestically'. As such, theoretically, countries with automatic incorporation (referred to as Monist Legal Systems typically characterising civil law countries) should not need legislative incorporation and reform as do other countries (referred to as Dualist Systems typically characterising common law countries). However, the reality is much more complex. For example, in her overview of findings on implementation of the CRC in select countries with civil law, common law, Muslim jurisdiction and plural legal systems, Goonesekere (2007:28) states:

> Although the Committee on the Rights of the Child recommends the wholesale incorporation of the CRC in domestic legislative reform as the best method of incorporation, this has prove (sic) to be impractical. All legal systems adopt a method of codification and reflect an approach in which some norms are incorporated in general children's acts and/or in piecemeal ad hoc reforms.

In addition, Goonesekere observes:

> The different legal systems adopt either a monist or dualist approach to the application of treaties and the CRC and CEDAW. The CRC in fact, has not been applied directly even when a monist approach is accepted. Ratification, has, however, catalyzed a process of domestication by legislative reform in all systems (p. 27).

In his analysis of select civil law countries, García Méndez (2007: 122) also argues strongly that legislative incorporation and reform is required at the national level to incorporate provisions of an international treaty even if it automatically forms part of the domestic legal system. His analysis astutely grounds this point theoretically in terms of the facts that the *rights of children suffer from a 'lack of political prominence', difficulties relating to the 'possibility of private individuals invoking the provisions of international treaties directly before local courts' and, that in actual practice, 'local courts do not apply directly the provisions of international treaties'* (*p. 122*).

There are additional factors that complicate the study and analysis of law reform. In their discussion, Alston and Tobin (2005:29) provide examples of countries with monist systems where a ratified treaty, such as the CRC, should automatically become a part of domestic law but does not: 'An important

example in this regard is France. The *highest French court*, the Cour de Cassation, has held in a number of judgments that the CRC, or at least the great majority of its provisions, is not directly applicable in French law'. Exceptions are also based on reservations: 'In Austria and Germany, ratified treaties normally form part of national law. However, in both of these countries, *declarations or reservations* were made at time of ratification, to the effect that the CRC is not self-executing and cannot be applied directly' (UNICEF 2006: 2). Conversely, in countries where 'the Convention has not been incorporated directly into the domestic law' (typically a dualist approach), the CRC has been taken into account by the courts, including for example: 'British courts (which) have on occasion taken the CRC into account in interpreting statutory law…' and courts in India and Sri Lanka where the Convention 'can be used to interpret legislation and legal principles concerning the rights of the child' (UNICEF 2007: 6–7). As García Méndez (2007: 120) concludes: '…the frontiers between the common law and the civil law juristic traditions are highly pervious.'

The preceding discussion makes clear that the status of the ability to 'apply and/or invoke provisions of the CRC in court' is not exclusively tied to the status of the Convention as a self-executing system, i.e., the *judicial process* in practice whilst related is distinct from the *legislative processes* of direct incorporation and legislative reform. In addition, even if the CRC can be applied and/or invoked in courts, judges can resist applying the legal reform and this has been noted in several regions globally including Latin American, Islamic States and Sub-Saharan Africa. For example, García Méndez (2007:113) observes that in many countries in Latin America, in spite of direct incorporation of the CRC, the juristic tradition historically was one of having a special law to deal with minors' matters that was paternalistic, repressive and discretionary (similar to the US and Europe).

Another important aspect of the structure of the existing legal system is the existence of religious and customary laws, most often as part of what is referred to as a mixed or plural legal system and most often restricted to law on family and personal status within a country. The Committee specifically mentions the need to bring customary law into conformity with the CRC. Examples of *traditional, customary or religious laws or codes* in conflict with the CRC range from flogging children to child marriages which substantially hinder implementation regardless of whether the Convention is self-executing or the degree of constitutional-order and/or national legislative incorporation and reform. For example, Kassan (2008:172) notes that in Sub-Saharan Africa, 'the retention of legal systems within each territory that are pluralistic in nature, insofar as they consist of the statutory law, religious laws and African customary laws' act

'*as one of the obstacles to the enforcement of children's rights on the continent'* (emphasis added).

Turning attention from complexities at the level of the legal system to the complexities in the processes of legislative reform, the IRC reports (UNICEF 2007: 103) observe, whilst most countries have made substantial changes in their legislation, the process of law reform has been gradual, fragmentary and primarily focused on child welfare protections. For example, regarding Children's Codes or Comprehensive Law, as discussed in the latest IRC report (UNICEF 2007:2), code refers to a single piece of legislation intended to cover an entire subject or area of law. In principle, then, a children's code should cover all legal matters concerning children, or at least all those covered by the CRC. However, most pre-1989 children's codes were largely focused on issues such as juvenile justice, and even the new codes (post CRC) vary widely in coverage, leading the IRC to conclude in their study that 'the term "children's code" is not used in a technical sense, but simply to refer to laws that are so titled'. Also, even if a basic principle of the CRC such as Article 3, 'the best interests of the child', is incorporated into a "comprehensive" children's law or code, it may be defined or applied very narrowly (e.g., custody care) or redefined as '(f)or some Islamic States, there appears to be a tendency to equate the best interests of the child with the precepts of Islamic law' (UNICEF 2007:24).

In summary, the findings reviewed above paint a very complex picture of the relationships between the CRC, national legal systems and children. Part of this complexity may be due to different samples, subset of countries, regions, the small number of cases in many studies, and the different aspects of the legal process focused on. However, viewed within a conceptual framework of a rights-based model of children as a minority group experiencing prejudice and discrimination (Bitensky, 1998; Lombardo and Polonko, 2010 ; Goonesekere, 2007; García Méndez, 2007), these findings are not unexpected. Implementing child rights in the CRC in law or any area (GMI) would typically meet resistance to the degree that adult privilege, especially those with a vested interest such as parents, is challenged. This would lead us to expect theoretically, that the overall process of law reform would be slow, fragmentary and occur most frequently in areas less challenging such as welfare protections, and that aspects of legal systems (e.g., self executing) that should automatically translate rights into practice face many possible obstacles.

This paper seeks to build on the previous work, bring conceptual clarity and contribute to our knowledge of the implementation of the CRC through law reform. Most importantly, we begin by extending our analysis of the process of law reform beyond a subset of countries studied by the IRC to *all State parties*

who submitted at least one report to the Committee. Consistent with the IRC studies, analyses are based on the full range of documents submitted to the Committee. Drawing primarily on the conceptualisations by the IRC reports discussed above but adding several key variables suggested by other studies, we also seek to develop a set of measures and codify results more explicitly across countries and then explore the relationship between these measures of law reform and two measures of child rights, i.e., a hybrid of a traditional welfare-protection and rights-based measure (child mortality under age five); and a child rights measure reflecting power relationships between adults and children, i.e., child physical abuse by parents. Certainly all of the indicators included should be related to children's rights in the direction suggested in the review, although the relative impact of factors is unclear and would depend on the extent to which findings in our study for all State parties that submitted reports mirror the complexities found in prior studies on subsets of countries. Ultimately, given the nature of prior research, our primary objective is to contribute by attempting to develop comparative measures and explore relationships for all countries party to the CRC (with at least one report by 2005). In this sense, our study remains exploratory, meant to point the way for future research regarding prevalence of legal domestication of the Convention and possible relationship to children's experience of their rights.

Methods and Measurement

Data Source

For several reasons the best available source of data for research on implementation of the CRC remains the documentation submitted to the CRC Committee. Most important, there are no other uniform sources of information on the law as detailed by the Committee that are comparable across countries; and presumably, given the complexity of domestication, there should be no better informed experts to describe and evaluate the nature and extent of this law reform than the governments and NGOs submitting this information and the Committee evaluating it.

As such, consistent with the prior IRC reports, our study is based on information in all of the documents submitted to the Committee including the State Party Reports (SPR), the alternative NGO reports, the Committee's Concluding Observations (CO) and written answers submitted by States in response to the Committee's requests. Our study differs from the IRC reports in analysing the data for all countries for which there is at least one State Party Report

to the Committee. All materials in all reports available through 2005 (before the 2005 change in CRC reporting guidelines related to law reform discussed above) were included. We attempt to codify and operationalise measures of indicators of reform in a consistent way across countries. Similar to the prior IRC reports, this study is limited in interpretations and conclusions to the extent that information contained in the reporting process to the CRC Committee is incomplete. However, this study is likely further disadvantaged by the lack of access to the IRC's privileged unpublished data from select UNICEF field offices.

The task of analysing all of the documents in all of the Reports ever submitted to the CRC by 2005 (beginning in 1992), i.e., for 179 countries, was a considerable undertaking. Regarding coding, all materials submitted for every country were rated by two independent coders on each of the dimensions studied.[2] In order to achieve the best level of conceptual consistency and construct validity that was possible, materials for a small number of countries were coded and specific information used to justify and refine operationalisation of indicators. This process was iterated until measures were finalised. For discrepancies, coders met to discuss and determine final codes. This process helped to develop a more shared understanding of the information contained in the volumes of materials in the reports and of the coding procedures before the final phase of coding.

Measures of Law Reform

Our specific measures of indicators of law reform draw primarily on those described in the IRC reports and in the Committee guidelines. All documents in all reports were analysed for any specific reference to the processes relating to level of incorporation (Constitutional-Order or National Legislation) and extent of incorporation (Direct/Full or Partial) of the CRC into the country's legal system as well as aspects of the structure of legal systems argued to impact these processes. (Examples of codes for all measures can be obtained by emailing authors.) Regarding implementation at the Constitutional level, *"Constitutional-order Incorporation/Reform"* was coded as: yes, fully – the CRC has been fully incorporated into the Constitution by any method; yes, partially – at least some of the provisions/principles of the CRC have been incorporated into the Constitution; no – provisions have not been incorporated, typically stated as a concern, 'in progress,' or not referred to in any document.

2 This is part of a larger study, conducted over several years, of research on documents submitted to the Committee by State Parties on all eight GMIs.

Regarding implementation at the level of domestic legislation, measures of four aspects of legal systems/regimes that relate to the status of the CRC as an international treaty, serving to facilitate or hinder the translation of child rights into law were included. The first three are theoretically related to civil (vs. common) law systems and the fourth to mixed or plural legal systems based on customary or religious law. The first factor involves the process of giving rights in the CRC the force of law, whilst the others serve to facilitate or hinder the process of translating these laws into practice. First, *automatic incorporation – "self executing"* was coded yes – if any reference to the CRC as self-executing, automatically incorporated or "forms part of national law" as per constitutional principles. Second, relating to the judicial process, "the CRC can be *applied by and/or invoked in the courts*" was coded yes – if any reference to the ability to apply or invoke any provision of the CRC in the courts (regardless of whether it actually had been thus far). Third, regarding the CRC's hierarchical legal status, *"precedence over domestic legislation" if there is a conflict between laws relating to the CRC and existing domestic legislation* was coded yes – if any reference to the CRC as an international treaty taking precedence over conflicting domestic legislation (regardless of whether it actually had been given precedence thus far). Fourth, "existence of *customary*, *traditional or religious laws/codes on children"* was coded as yes – if any reference to customary, traditional or religious laws or codes or practices that hindered the process of law reform and extension of rights to children or harmful to children's lives. Any other indications for these four factors were coded as no (i.e., "absence of any of the first three variables or presence of the fourth" is stated as a concern by the Committee or other body, or not referred to in any document, or stated "in progress").

Recall that the IRC described two major processes of law reform at the level of national legislation : direct incorporation, in particular self-executing, and legislative incorporation and reform. Measures of several aspects of the latter were included. First, "*Legislative Incorporation/Reform"* was coded as: yes, comprehensive – if any reference to reform to incorporate all, most or many provisions of the CRC and harmonise national legislation; yes, partially – at least some of the provisions of the CRC have been incorporated and reforms to harmonise national legislation; no – if lack of is stated as a concern, "in progress" or not referred to in any document. A separate measure, *Children's Code/ Act,* was coded yes – if any reference to a Children's Code, Bill or Act regardless of the specific focus or scope; no – else.

Drawing again on the work by the IRC indicating that the prevailing trend of legal reform has been the "sectoral approach", we sought to include measures of "*Sectoral Legal Reform"*, which refers to the process of harmonising legislation

(enacting new laws and revising existing laws) with the CRC in one or more areas. Given the considerable range of sectoral legislative reform, we sought to ground these in a conceptual framework of the type of children's right targeted consistent with models discussed earlier, i.e., child-welfare and child-rights models. The former was labeled *"child welfare protections"* relating to health, education, welfare (e.g., law reform on compulsory or free education, high levels immunisations, breast feeding, child mortality/birth weight, increased Social Security by the SP).[3] The latter was labelled *'children's equal rights'*, focused on legal reform involving any legislation relating to Article 19 protecting 'children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, whilst in the care of parent(s), legal guardian(s) or other…' restricting our focus to laws dealing with parents, guardians and teachers. The remaining rights were grouped into a residual category labeled '*children's transitional rights*' that push beyond the traditional health, education and welfare rights of survival and protection but do not directly challenge adult privilege of parents/caretakers within families as equal rights do (although it may be related). Examples include birth registration, extension of rights granted for all children regardless of gender, race, refugee and other categories, outlawing FGM, child marriage, child trafficking, children in conflict with the juvenile justice system, and child labour.

For each of the three areas of sectoral reform, our measure focused on the *amount of legislative reform* ranging from none (0) to a great deal (10). The measure was based on the sheer amount of law reforms that were referenced in the documents analysed. No attempt was made to assess relative importance or scope of specific legislative reform as that was beyond the scope of our analysis.

Finally, given how critical the right to legal protection from violence is, we added a measure of whether corporal punishment of children was illegal in the schools and a measure of whether it was illegal in all contexts including the home by parents and all caretakers by 2005 (so that the cut-off year was the same as that for other law reform measures included in the study). The source was The Global Initiative to End Corporal Punishment (http://www.endcorporalpunishment.org/) and as such is independent of the CRC reporting process.

3 Law reform in this area of health education and welfare primarily involves welfare protections such as high levels of immunisations or nutrition (general human development). However, theoretically law reform in this area can also reflect a rights-based model for example, if the governments guaranteed financial support of all children, free and comprehensive medical care for all children, equal education for all children and free of violence, abolishing traditional practices that harm children's health, but most often do not.

Measures of Children's Rights in Practice

Recall that our study sought to explore in a preliminary way, whether any of the aspects of law reform would be related to children's lives. The need to develop and explore indicators of children's rights has been understood from the adoption of the CRC and continues to be a concern (Cohen, Hart and Kosloske, 1996; UNICEF, 2007:111). This study includes two indicators of child rights measured independently of the CRC reporting process. One indicator was designed to tap rights within the *"*child equal rights*"* model. This indicator focused on the foundational right of protection from violence. Since the majority of physical violence perpetrated against young children is by parents, eliminating this must be our primary focus. Unfortunately, measures of any type of child abuse that are comparable across countries are extremely rare, especially from the voices of children themselves. This study uses the measure from the UNICEF Children's Voices studies for 74 countries on the prevalence of children responding that parents 'beat me' to the question 'normally, when you do something wrong, what do your parents/guardian do' (published and unpublished sources collected over a series of years through 2008). The second indicator was originally selected to tap rights that correspond to the *"*child welfare model*"* i.e., addressing important but more development issues rather than rights based. Of these we selected rates of child mortality under age five (drawn from UNICEF, State of the World's Children). To increase comparability between the two measures, data for the latter are for 2008. In reflecting subsequently on the causes of child mortality under age five , it became clear that this represents a hybrid measure combining primarily elements of welfare (e.g., children dying from poor health) but also some aspects of transitional (e.g. young children who die from hazardous labour) and equal rights (e.g., children who are beaten to death).

Results

Results from our analyses of documents for 179 State parties for key measures of legal reform are presented in Table 1 (Implementation of the CRC: The Ways Rights Become Laws) and Table 2 (Relationship of Indicators of Law Reform and Children's Protection/Rights). To begin with law reform at the highest level, only a minority of countries (15 per cent) were reported to have engaged in *"Constitutional-order Incorporation or Reform"* that incorporated even one of the provisions or principles of the CRC into the Constitution through any means including as part of a new constitution formed after ratifying the CRC,

by an amendment to an existing constitution or into constitutional law by decisions of the Court. Consistent with the IRC reports, direct (full) incorporation of the Convention at the level of the Constitution was extremely rare. The presence of at least some "Constitutional –Order Incorporation/Reform" was not significantly related to either measure of children's protections or rights, which can be understood within the context of the limited extent and general nature of principles/provisions included. Recall the 2007 IRC report, which also included an analysis of a number of constitutions which our study did not, observed that whilst scope varied considerably, for many countries, few principles or provisions were incorporated and often quite general such as the 'right for motherhood and childhood to be protected by law' which, theoretically, would have little potential for translating specific rights of the CRC into children's lives.

The remaining results focus on law reform at the national legislative level. We begin with aspects of the legal system relating to the status of the CRC, as an international treaty, which serve to facilitate or hinder the processes of law reform. The first factor, direct incorporation as a result of constitutional principles is often argued to be one of the most critical variables in the process of law reform and extension of rights to children. Results indicate that the CRC was reported to be self-executing in 37 per cent of the 179 State Parties included in our analyses. The CRC can be applied by or invoked in the courts, or even "only referred to before the courts as a means of interpretation of national legislation" in almost half of the countries.[4] This measure includes any country where evidence in the documents indicates that the Convention could be applied or invoked or referred to in the courts, whether the CRC is self-executing or not. For example, in their State Party Report, Denmark states that the CRC has not been incorporated into Danish law but can be applied by and invoked before the Courts. The percentage of countries" "self executing" and "able to apply/invoke in the courts" are lower in our study than in the IRC study. However, in separate analyses using our measures but restricted to their subset of 52 countries, we found that a significant part of the

4 We expanded our measure to include the latter category to be more consistent with results for our other measures of "some reform". Also, there were not enough of these cases to include a meaningful measure separate from "applied by courts" and clearly the Committee deemed this category of "only referred to" as worthy of mention in their observations.

TABLE 1 *Percent of Countries characterized by level, extent and type of legal reform*

Implementation of the CRC: The Ways Rights become Laws	**Percent (N=179 SP)**
MEASURES FROM DOCUMENTS IN THE CRC REPORTING PROCESS	
Processes of Incorporation and Reform: Constitutional Level	
Constitutional-Order incorporation/reform: at least partial	15%
Processes of Incorporation and Reform: National Legislative Level	
Legal Systems and the CRC	
Direct Incorporation into National Legislation—Automatic: Self-Executing	37%
Judicial: CRC can be invoked and/or applied or referred to in *courts*	45%
Hierarchy: CRC has *precedence* if conflict with domestic legislation	24%
Customary/Religious Law, Traditional Codes hinders CRC	31%
Legislative Incorporation and Reform	
'Legislative incorporation and reform'—comprehensive	9%
'Legislative incorporation and reform'—at least partial	84%
Children's Code/Act	13%
Sectoral Legislative Reform by Type of Children's Right	
Child Rights-Based: At least some	47%
Child Transitional Rights: At least some	75%
Child Welfare Protections: At least some	63%
MEASURES INDEPENDENT OF THE CRC REPORTING PROCESS	
Legal System: Customary/Religious Laws	43%
Corporal Punishment is illegal in all contexts including the Family	9%
Corporal Punishment is illegal in School	52%

difference, i.e., close to 60 per cent, is due to differences in the nature of their sample.[5] In reference to hierarchical status, the CRC only takes precedence

5 Their sample of 52 under-represented countries in certain regions such as Western Europe and Sub-Saharan Africa, and over-represented countries in regions such as Latin American and Central and Eastern Europe, where the Convention formed part of domestic law and over one-third had adopted new constitutions after 1989. When we restricted our analysis just to the subgroup of 52 countries in the IRC 2007 report using our measures of variables, as expected given the nature of their sample, a higher percentage of countries were found to be

TABLE 2 *Relationship of Law Reform and Children's Protection/Rights: Means of Child Protections/Rights within categories of the presence (yes) or absence (no) of indicator of law reform*

Implementation of the CRC: Rights become Laws	***Child Physical Abuse*** **Means[a] (SD)**		***Child Mortality*** **Means[a] (SD)**	
Measures based on the CRC Reporting Process	Yes	No	Yes	No
Constitutional Level				
Processes of Law Reform:				
Constitutional Order: at least partial incorporation/reform	16.3 (13.4)	13.2 (12.4)	54.0 (47.4)	45.2 (54.1)
National Legislation Level				
Processes of Law Reform				
Status of CRC in Legal System				
Direct Incorporation: Is Self- Executing	11.2~ (10.7)	16.7 (14.0)	38.2~ (46.0)	51.5 (56.5)
Judicial: CRC can be Invoked or Applied in Courts	10.4** (10.6)	18.3 (13.7)	36.3* (44.1)	55.3 (58.5)
CRC takes Precedence over Domestic Legislation	10.1~ (9.8)	15.7 (13.5)	32.5* (40.8)	50.9 (55.8)
CRC Hindered by Traditional, Religious, Customary Law	27.5** (13.8)	12.0 (11.4)	85.6** (63.3)	28.8 (36.0)
Partial Incorporation: Legislative Reform				
Legislative incorporation/reform: comprehensive	13.5 (5.2)	13.9 (13.5)	19.6** (14.2)	49.2 (54.8)
Legislative Reform: At least some	14.1 (13.0)	10.5 (5.9)	45.9 (52.4)	50.4 (58.2)
Children's Code/Act exists	16.3 (11.7)	13.3 (12.8)	34.1~ (34.5)	48.5 (55.3)
Child Welfare Protections: At least some	11.5* (10.5)	21.4 (16.0)	36.2** (44.3)	65.1 (62.2)
Child Transitional Rights: At least some	12.5~ (11.4)	19.9 (16.6)	41.6* (51.1)	62.8 (56.9)
Child Equal Rights: At least some	13.4 (12.2)	14.4 (13.3)	30.6** (39.3)	61.1 (59.7)

Implementation of the CRC: Rights become Laws	*Child Physical Abuse* Means[a] (SD)		*Child Mortality* Means[a] (SD)	
Measures Independent of CRC Reporting Process				
Legal System: Customary and/or Religious Law part of Legal System	30.3** (14.1)	10.4 (9.1)	78.2** (61.5)	23.0 (28.6)
Law bans Corporal Punishment (CP) of children in Home (all contexts)	3.3** (1.9)	15.4 (12.8)	6.3** (4.1)	50.6 (54.1)
Law bans Corporal Punishment (CP) of children in Schools	10.1** (10.3)	18.7 (13.7)	36.0** (50.2)	58.0 (54.1)

** $\rho \leq .01$; *$\rho \leq .05$; ~ $\rho \leq .10$

[a]Mean differences, two-tailed t-test: most conservative

over domestic legislation in slightly less than one-fourth of countries. Of interest, over 30 per cent of the countries were referred to as having 'customary, religious or traditional laws' that hindered the process of law reform relating to the CRC and/or did not reflect the principles of the Convention and prevented children from enjoying their rights. All such references were found in the Committee's Concluding Observations. Concerns included examples of customary law, religious law (e.g., Sharia Law), traditional legal codes (e.g. Kanun) and associated traditional harmful practices. Examples of the latter parallel those described as concerns for UN bodies including '… female genital mutilation/cutting … ritual sacrifices of children, the abandonment or neglect of children with birth defects, the gifting of virgin girls to shrines or priests, "honour killings" and child marriage' (UNICEF 2007:68) as well as flogging, stoning or amputation for punishment, ritual enslavement and more. Committee concerns make clear that the impact of any legal reform for children's rights must take into account obstacles to the implementation of the CRC posed by

self-executing i.e., 58 per cent. This is clearly higher than the 37 per cent we found for the full 179 countries, but still less than the over two-thirds they report as 'directly incorporating the Convention into national law'. In other words, close to 60 per cent of the difference between the IRC study and our study on this variable (and on hierarchical status) is due to the nature of their sample selection.

customary and religious laws and harmful codes and practices as applied to family/personal domains.[6]

Regarding children's lives, countries where the Convention is self-executing had higher rates of children's protection/rights, although for both child abuse and mortality, the relationships approached significance (ρ=.07, ρ=.09). States whose legal regimes are characterised by the ability to apply and/or invoke the CRC in the courts and where the Convention takes precedence over national legislation in the legal hierarchy by existing principles, have significantly lower rates of child deaths and child physical abuse although the latter approached significance(ρ=.08). Conceptually, one would expect that the areas that are more child rights-based vs. protections might face greater obstacles in relation to conflicting legislation. Countries with the presence of "customary, traditional or religious laws/codes" that hinder the implementation of law reform on the CRC had significantly lower levels of children's protections/rights for both measures of child physical abuse and mortality. This finding is consistent with the observations by the Committee and with research by Kassan (2008) and others that customary legal systems act as one of the obstacles to the enforcement of children's rights. There are theoretical reasons to expect customary and religious law as part of the legal system to hinder the process of law reform and extension of rights to children (and women) which we will discuss in the conclusion.

In view of the strength of this relationship for both measures of children's lives, we sought a measure of customary, traditional and/or religious law independent of the reporting process to the CRC Committee to provide additional evidence that this pattern of results was not just due to possible differences in CRC coverage. Drawing primarily on the descriptions of legal systems in the World Factbook for 2005 (to be consistent with the end date of our other measures of legal reform),[7] a country was coded as having "*customary, traditional or religious law*" if that was included as part of the country's legal system (in general or only applying to family relations/personal status) regardless of other aspects of the legal regime (e.g., Common or Civil law). This was typically found for what is most often described as mixed or plural legal systems. Forty-three per cent of the 179 countries in this study fit this criteria which is higher

6 Although typically harmful to the status/rights of women and children, this is not to ignore that customary/traditional law as it relates to issues other than personal or family law, specifically relating to land and other resources, can facilitate the rights of less powerful indigenous groups in relation to current groups in power (Roy, 2005).

7 *Data in the World Factbook 2005* was supplemented by other sources if the entry for a country was very vague, missing or incomplete.

than the 31 per cent identified in the CRC reporting documents, but the latter only covers references to such laws in relation to specific acknowledgement of 'hindering the implementation of the CRC', whereas this measure focuses on the existence of customary or religious law as part of the legal regime in general. Additional analyses indicated that similar to the measure from the CRC reporting process, countries 'having customary or religious law' (at least in relation to families/personal status) as part of the country's legal regime had significantly lower levels of child welfare protection and child rights, i.e., markedly higher rates of child deaths and child physical abuse. It is important to note that neither the effects of this general measure nor the measure specifically related to the CRC documents can be attributed simply to differences in economic level, for when controlling for GNI per capita 2005, the negative relationships between both measures of the existence of customary or religious laws and both measures of children's protections/rights in a country were reduced somewhat but still significant and mean differences substantial.

Turning from the status of the Convention and the structure of the existing legal system to processes of *legislative incorporation and reform*, very few countries were referred to as having *comprehensive legislative incorporation and reform* (i.e., incorporating all, most or many of the provisions of the CRC), and was found among countries that were both self-executing and not. As suggested by prior studies, it was extremely rare to find direct incorporation of the Convention through legislative action. This meant that we could not explore the relationship between methods of direct incorporation other than self-executing per se or relate differences to measures of children's lives as hoped. Consistent with prior studies, our analysis indicates that the vast majority of countries have incorporated at least some provisions or principles (at least one) of the CRC into national law through legislative reform. Few countries were referred to as having developed a new or revised an existing "*Children's Code/Act*" in some way related to the Convention regardless of the focus. These revisions were discussed most often within the context of Committee concerns that the Code/Act reflected child welfare protections and needed to be rights based. For example:

> Libyan Arab Jamahiriya: CRC/C/15/Add.209 4 July 2003
>
> 7. The Committee notes the adoption of the Child Protection Act No. 5 of 1997, in addition to the numerous other laws and decisions that have been adopted with a view to improving the welfare of children. It is concerned, however, that many *measures reflect a predominantly welfare- rather than rights-based approach* (emphasis added).

Regarding results from the simple bivariate analyses, given that legislative reforms primarily represented partial incorporation of some of the provisions of the CRC and our measures do not indicate the nature of "important provisions", it is as expected that the simple presence of some legislative reform to incorporate the CRC is not related to either measure of children's protections/rights (similar to "some constitutional order reform"). The presence of a "Children's Code/Act" in a country is not related to rates of child abuse, although it approaches significance in relation to lower rates of child deaths (ρ=.09). *Comprehensive legislative incorporation and reform* in a country is only significantly related to lower rates of child mortality, which would be consistent with the frequent emphasis on child welfare protections in law reforms. Regarding comprehensive legislative incorporation and reform, recall some suggest in the prior literature that law reform processes at the national legislative level primarily rely on either self-execution (direct/full incorporation) or legislative reform (partial incorporation). If true, then separate measures of each would underestimate effects in relation to our measures of children's protections/rights, as direct and partial incorporation would apply primarily to different subsets of countries. We created a measure to combine both and examine in relation to child mortality and abuse. However, the very few countries with comprehensive legislative incorporation and reform were also likely to be countries that were self-executing (i.e., 9 of the 16). As such, this meant our combined measure provided little additional variation, and when examined, no new information in relation to children's protections/rights beyond that provided by the separate measures. This provides support for the arguments made by Goonesekere and others that processes of legislative incorporation and reform are relevant for both civil and common law countries.

Regarding specific types of legislative reform referenced in the context of the CRC, results for the "*amount of sectoral reform*" in each of the three categories of children's rights indicate that the majority of countries have made at least some reform on laws relating to child welfare protections and laws relating to child transitional rights. In contrast, legal reform relating to the area of child equal rights was only referenced in less than half of countries. Regarding the extent of sectoral reform, it is noteworthy that there were no countries for which any of the reports indicated a great deal of legislative reform in any of the three categories as five out of a possible ten was the highest score given and that was in the area of child welfare protection. As expected, not only did fewer countries have reform in the area of children's equal rights, but also the amount of legislative reform was considerably less than for the other two areas. Legislative reform in all three categories of welfare protection, transitional and equal

rights was significantly related to lower levels of child mortality, although only legislative reform in the area of welfare protections was significantly related to lower levels of child physical abuse and transitional rights approached significance for both. Conceptually, we would expect that either sectoral reform in all three areas would be related to both measures of children's protections/rights, or sectoral reform on child welfare would be related to child mortality and sectoral reform on child equal rights to physical abuse. The findings on the effects of child welfare legislative changes could be in part due to the fact, as stated earlier, that the measure of child mortality under five years old is to some extent a hybrid of a rights reflecting primarily the component of "child welfare" for deaths related to lack of access to health and welfare protections in a society; and also, albeit to a much lesser degree, a component of child equal rights as parents are the primary perpetrators of child murders of young children (Pinheiro, 2006); and a component of transitional rights as some young deaths are associated with FGM, "honor" killings, sale of children, etc. In addition, it may point to the possibility that child welfare protection reforms as measured (e.g., health) are those most likely to have an already functioning bureaucracy with existing interactions between state agencies and parents.

However, the pattern of relationships may also point to the larger issue of the predominance of reform in the area of child welfare protections and accompanying '*shift in rhetoric*' in reference to the inclusion of child rights often within the context of child welfare legislation, leading to difficult measurement issues, including overlap between categories and unequal coverage. Taken together, these issues suggest that it is premature to attempt to measure types or categories of sectoral reform. To take one example, in its SPR, Belize referred to their Families and Children Act whose main features included the duties of the parent or guardian toward the child with respect to rights to education, immunisation, clothing, shelter, medical attention and balanced diet, and *to protection from discrimination, violence, abuse and neglect* (emphasis added). In spite of this, corporal punishment of children was still legal in the home and schools in Belize. References in the reporting process relating to reform in the area of child 'protection from discrimination, violence, abuse and neglect' had to be coded as 'child equal rights reform' even though typically this was one of the few areas where no additional information on specific laws was provided, unless noted by the Committee. For example, in reference to Iran, the Committee welcomed 'the new Law on the Protection of Children and Adolescents (2003), which includes the prohibition of *all forms of molestation and abuse of children,*' but expressed concern about 'the exceptions stated

therein continue to legally allow various forms of violence against children' within and outside of the home. In addition, much of the legislation in this category of child equal rights, labeled 'protection from violence by family/ teachers' concerned *sexual violence* and in that area, not only was specific information almost always provided but also multiple laws could be changed at the same time regarding use of defence in rape; age of consent; issue of diminished capacity; increased sentences for rape, etc. This would result in a higher score for sheer amount of legislation concerning "child-equal rights" for a country such as Belize than a country like Germany who had passed a law to prohibit all forms of violence against children in the upbringing, including the application of physical punishment for the purposes of upbringing, i.e., reform to make corporal punishment in the family illegal.

Our findings in this area related to child equal rights are consistent with the study by the NGO Group for the CRC (2006) on NGO reports submitted to the Committee which found that only a third of the NGO reports addressed violence against children and, of those few, sexual violence was the aspect addressed most frequently. The report amongst others expressed deep concern about the lack of reporting on violence against children in general and on physical abuse in particular, given its prevalence in families and schools. In view of the lack of data on physical violence in the CRC reporting process, our original decision to include indicators from an independent source of the presence of laws to afford children protection from corporal punishment in all contexts including the home and in schools by 2005, assumed added importance. Of the 179 countries in our study, corporal punishment of children was illegal in the schools in 53 per cent of the countries but only illegal in all contexts, including in the home, by parents in 9 per cent. That so few countries had made corporal punishment by parents illegal attests to how firmly parents' power over children is entrenched and how truly foundational this right is for children. The presence of laws against corporal punishment in the schools and in the home (i.e., all contexts) are compellingly related to our children's rights measures – States that banned corporal punishment of children had significantly lower rates of child mortality and child physical abuse. Differences were particularly striking for bans on corporal punishment that included the home. Given the preponderance of child welfare reforms and the non-significant relationships between other aspects of law reform in our study and rates of child physical abuse, this relationship of bans on corporal punishment to less child physical abuse suggests that translating categories of equal rights into children's lives may necessitate efforts to target specific laws in these areas.

Conclusion

Our task of analysing all of the documents in the reporting process for every country submitting at least one State Party Report by 2005, i.e., for 179 countries, was part of a larger labour-intensive study with the objective of collecting data on all eight GMIs over a five-year period. Of all of the GMIs, law reform was the most difficult to code. As discussed, the process of incorporation of international treaties into domestic law is extremely varied and complicated. Terms are not easily accessible for those outside of the legal profession, and perhaps most difficult for social scientists, there is often a lack of operationalisation of concepts and consistency within the CRC reporting documents as well as across studies in the terminology used to refer to legal reform which is needed for social science research to pursue questions of prevalence and impact.

Regarding measurement of aspects of law reform, the early guidelines provided by the Committee (1996) on exactly what information to include in State Party Reports appear straightforward and thus should have provided relatively straightforward responses and coding. Several problems emerged, however. First, not all aspects of the information requested in the guidelines were addressed in reports submitted to or prepared by the Committee. We assumed, given the expertise of the Committee, that any reform of significance would be referred to in observations by the Committee itself if not already mentioned in some document submitted in the SPR or NGO alternative reports. As such, measures of law reform were coded as "none" if statements indicating that law reform to incorporate/harmonise with the CRC were absent, in the process of being reviewed, in progress, or if not mentioned at all in any document. Whilst the latter seems sound in this context, the researcher is left unclear as to whether omissions in coverage reflect the fact that the particular aspect of reform did not occur or reporting is simply inconsistent which would decrease substantially the value of such documents for researchers and policy-makers involved in advancing children's rights.

Second, coding was difficult in other contexts because of the complexity of information provided. For example, note the difficulty in coding decisions in reference to the 'ability to apply or invoke the Convention'(regardless of whether it is done in practice) in Japan:

> CO 1998: 7. The Committee notes with concern that although the Convention on the Rights of the Child has precedence over domestic legislation and can be invoked before domestic courts, in practice courts in their

> rulings usually do not directly apply international human rights treaties in general and the Convention on the Rights of the Child in particular.
>
> SPR 2003: 13. As for the manner in which treaty provisions should be applied to the settlement of domestic cases, there is no precedent of a court decision explicitly showing whether or not the direct application of the provisions of the Convention is possible.

The inconsistency in coverage in the reporting process and complexity involved in reform makes it difficult to generalise or compare to prior studies. For example, recall that close to 60 per cent of the differences in results between this study and the IRC reports on several measures involved the nature of their sub-sample. However, there is no way to know whether the remaining differences, albeit not large, were due in part to the additional information the IRC has access to or differences in coding decisions. In the few cases where we could explore, a number were clearly due to the additional information the IRC had access to and a few were not, most probably reflecting complexity of information. For example, in reference to Tunisia, whilst the IRC (2007:6) states that the CRC has been incorporated into domestic law and takes precedence over national law, we were unable to find evidence in any of the documents submitted to the CRC to support that (and thus coded differently). Ali's (2007:177) analysis was consistent with our coding that national legislation has precedence over the CRC. The work of the Committee has considerable potential, although to be used by social scientists for research on any aspect of the implementation of the CRC and relation to children's lives, it is critical to attempt to increase the standardisation of information provided by State parties, and at least by the Committee in the Concluding Observations focusing on key variables such as stating whether or not the CRC has been fully incorporated into domestic law and whether or not it can be invoked/applied in court. In our judgment Committee Guidelines should ask for specific information they deem essential (See CRC General Comment No. 5, and 1996 Guidelines).

A third issue in studying the impact of any reform on children's access to rights in their lives is the dearth of comparable data on children across countries in almost every area except those relating to development goals and child welfare protections such as percentage immunised, maternal and infant mortality, or enrolled in education. Also, among the few efforts to collect comparable data across countries, such as the "child discipline modules" of the UNICEF global databases, the mother is questioned about the physical and emotional violence they inflict on their child.[8] Whilst important and useful, children's

8 The primary alternative to the measure of child physical abuse used in our study that had comparable data for a number of countries was from the "child discipline modules" UNICEF

voices need to be heard; children themselves need to be surveyed in methodologically sophisticated studies that ensure anonymity, just as women are in relation to intimate partner violence; their unequal status vis-à-vis adults needs to inform future research. Whilst some areas such as child slavery are extremely difficult to measure, others such as child sexual, physical, emotional abuse and neglect by adult caretakers can be and have been measured in studies of high school students ensuring anonymity, in select countries, in particular "Global School-based Student Health Survey (GSHS)" as well as Young Voices Studies. Without measures of children's enjoyment of all rights, studies on the implementation of the CRC are without the means to relate their findings to the very meaning and objective of the Convention.

Fourth, as with any research which studies law reform specifically in relation to implementation of the CRC, measurement of children's rights embodied in the country's domestic law is restricted to legal incorporation and reform after the ratification of the CRC, reported within the context of attempts to comply with the Convention. Whilst providing critical information on the potential and actual impact of the CRC on the law reform that we need, these measures of children's rights given the force of law are "truncated" by this time period. This does not provide a complete picture of the full range of legal protections afforded children globally or of other structural factors that may impinge on this process (particularly for countries that began the process of extending legal rights to children, such as banning all corporal punishment, before 1989 which includes Sweden, Finland and Norway). However, this "truncation" actually *reduces the likelihood of finding an effect of any given measure of law reform on children's lives*, which makes results on significant relationships found in our study even more compelling. Ideally, for every country, research would have

global data bases, available for 34 countries in 2008 and 54 in 2013. However, in contrast to "voices of children" surveys, this measure is based on questions asked of mothers (or primary caretaker) about psychological or physical punishment inflicted on a select child age 2–14 for the past month by any member in the household. As such, this measure seemed to the authors less likely to produce as much variation not just because it was based on the past month or parents' social desirability, but also because parents tend to underestimate substantially how violent they are (see Straus, 1994: 25) and define child abuse more narrowly than the victims (Naker, 2005). This would tend to increase measurement error and decrease the likelihood of finding relationships to measures of law reform. Of interest, we did preliminary analyses, uploading scores for percentage of parents using minor corporal punishment through 2008. As suspected, this measure was related to fewer variables in our study than our measure of physical abuse (although the N was smaller), but it is critical to note that it was significantly related to measures of the presence of customary/religious laws and law against corporal punishment reinforcing the importance of our findings.

and control for measures of every law relating to every provision and principle in the CRC as well as measures of children's access to every right, from the percentage suffering child sexual abuse to those in armed conflict or flogged publically, as well as confounding factors, before and after the CRC was ratified in order to attribute change to the implementation of a particular aspect of the CRC. Given the limited data available globally, this is neither realistic nor necessary. Within these constraints, we must search in earnest for leads on aspects of law reform in relation to children's lives based on the robustness of the finding, fit with prior research and the degree to which it can be grounded theoretically.

Having acknowledged difficulties and limitations in our data source, there are a number of such "leads" we can draw from this study, particularly if we do anchor them in prior research and theoretical conceptualisations. To begin with, consistent with the findings of prior studies, most countries have indeed engaged in some law reform to implement principles of the CRC and much related to welfare protections. However, as one would expect, it is the extent and type of legislative incorporation and reform that has meaning for children's lives, and for the extent and type of rights they have in practice. As expected, aspects of the legal regime in relation to the Convention, including automatic incorporation, hierarchical status and ability to invoke/apply principles in the Court were related to children's protections/rights. However, these relationships can be attenuated by the complexity of legal regimes and the critical role of legislative incorporation and reform (regardless of Convention status) which were also clear in our study. To take Argentina as an example, as stated in the State Party Report of 2002 (10.), the *Convention enjoys Constitutional rank* establishing precedential status and 'complete clarity on ability to invoke before the courts'. Nevertheless, in spite of the Convention enjoying this ideal status, the Committee, in its Concluding Observations (2002, 15. 38), expressed numerous concerns about existing legislation on children including the fact that 'there is no legislation in force at the federal level which considers the child as a subject of rights' and 'that there is no explicit prohibition of corporal punishment under law among other areas'. To take another example, in the Syrian Arab Republic, the Convention was automatically incorporated and 'supersedes' domestic legislation, although in its Concluding Observations (2003, 9; 1997 3.), the Committee expressed concerns about the lack of new legislation that is rights-based and the religious laws (governing personal status) in conflict with the CRC.

Regarding Committee concerns, our results are consistent with and provide additional support to prior studies that found the existence of religious and customary laws as part of a country's legal system hinders efforts to implement

the CRC and the extension of rights to children. Theoretically there are reasons to expect this. Research at the micro-level suggests that *within* cultures, those persons who hold more traditional attitudes towards women and children are more likely to support positions of inequality which in turn is related to greater risk of violence within the family.[9] The existence of traditional customary or religious laws in a country provides another critical layer of support for the traditional power relations between parents/adults and children allowing parents to ignore rights incorporated without fearing the consequences of inaction or continuing to abuse children's human rights. At the macro-level, Goonesekere (2007:5) observes that all four legal systems – civil, common, Islamic, plural (customary) – have evolved from a context of denial of legal rights and discrimination against women and children. As such, *the continuing existence of traditional law* as relates to groups with less power such as women and children, reflects even greater entrenchment of denial of rights over time. Goonesekere (2007) observes that processes in the secularisation of law (criminal and civil) during and post-colonisation periods in a number of States in MENA as well sub-Saharan Africa often reinforced the precedence of religious or customary law in the area of personal status/family law where much of children's (and women's) status/rights are centered as 'colonial law and policy recognized the wisdom of not intervening with local laws and domestic relations that had no special relevance to their political and economic project' (p. 220). In her analysis of Muslim State parties, Ali (2007:148) notes the difference in development over time of secularisation in civil and criminal matters whilst 'the domain of *Shari'a* was progressively limited to the family law field'. Ali continues that whilst 'Muslim jurisdictions are essentially pluralistic in their legal systems: principles of Islamic law or Shari'a law coexists with secular laws, customary practices and international human rights norms … As a general rule however, that is an overarching principle in all Muslim jurisdictions is the fact that family law is strictly governed by religious injunctions …' (p. 199). In reference to customary law in sub-Saharan Africa, Goonesekere (2007:222; 224) adds: 'These customary family laws were of special importance for their impact on women and children. They had evolved within an essentially patriarchal extended family and social organisation, and reflected a male-oriented value'; adding 'The marginalization of women and children

9 To take one example, in the most recent national poll available in the US, 'conservative or born-again Christians' are far more likely to support corporal punishment of children now and in the past. Eten, Henry, "Americans' Opinions On Spanking Vary By Party, Race, Region And Religion": http://fivethirtyeight.com/datalab/americans-opinions-on-spanking-vary-by-party-race-region-and-religion/.

that occurred through the social and economic changes of the colonial period and the transformation of customary law has not been addressed in comprehensive law reform'.

Finally, the important relationship between having corporal punishment illegal in school and in all contexts (including the family) and children's protections/rights (i.e., lower rates of child physical abuse and mortality) is consistent with Zolotor and Puzia's (2010:242) review of studies on corporal punishment in countries before and after the legal ban of corporal punishment or comparing countries with and without a ban on CP. They found that 'declines in both attitudinal support for and use of corporal punishment appears to be nearly universal' after the enactment of anti-corporal punishment laws. Given the pattern of weak relationships between our other measures of legislative incorporation and sectoral reform and child physical abuse (vs. child welfare) in general, this relationship provides evidence of the importance of focusing special attention in law reform on select areas in law that are critical for extending rights to children. As discussed earlier, prior research and theory indicate that legal protection from physical violence is one of the most critical factors associated with any group's movement out of oppressed status. Targeting this foundational right, particularly in the family, has the potential to produce radical shifts in other rights in a "bottom-up" approach. The weight of scientific evidence even on the "less severe" forms of corporal punishment finds that the more frequently a child is spanked, the more likely the child suffers negative consequences including amongst others: increased physical aggressiveness with others throughout life including violent attacks on siblings and other children outside of the home; increased anti-social behaviour including externalising such as fighting in school and other indicators of "delinquency"; increased likelihood of acts of physical violence in adulthood against dating partners, spouses and their own children; increased likelihood of engaging in risky sex behaviours; and increased mental health problems including depression, anxiety (see reviews by Gershoff, 2002 and Straus, 1994, 2008). As stated by former UN Deputy High Commissioner for Human Rights Kyung-wha Kang (UNHR 2013):

> Violence against children, including corporal punishment, is a violation of the rights of the child. It conflicts with the child's human dignity and the right of the child to physical integrity. It also prevents children from reaching their full potential, by putting at risk their right to health, survival and development. The best interests of the child can never be used to justify such practice.

Future research must not only identify and focus on specific law reform in specific areas (such as corporal punishment) that have theoretical reasons for being uniquely related to advancing the rights of children, but also address the gap between law reform and practice. For example, Bolivia's State Party Report (1997:48) states: 'The Convention, having been promulgated "that it may be regarded and obeyed as a law of the Republic", acquired that status of a law and therefore its application and enforcement should be, *although this is not the case in the everyday practice of the courts and administrative, political and social bodies where it is either disregarded or unknown'* (emphasis added). As noted by the CRC Committee and others, law reform would have no effect on children's lives without corresponding educational campaigns for all actors involved (including children), guidance for those charged with enforcing the laws and programmes to deal with those most affected. As Kassan (2008:173) reviews: 'Even in countries where the use of corporal punishment in schools has been abolished by law, the practice seems to continue'. Sweden serves as an excellent example of enforcing their law prohibiting corporal punishment of child via a creative educational campaign and demonstrating the powerful potential of law reform for children's rights … as the majority of the country supported the use of corporal punishment when the law was passed in 1979 and the percentage supporting or using, decreasing dramatically over the following decades (see Durrant, 2001).

To the extent that legal/administrative changes supporting children's rights are widely circulated and reinforced in dissemination, education and training efforts, they can provide opportunities for attitude, value and belief change. Moreover, education and dissemination efforts must find ways to address conflicting customary and religions laws. An excellent example is Ali's (2007) policy recommendations to separate the rhetoric from the reality to find places where children's rights are granted and consistent with Islamic laws and principles. This is similar to Vieth's (2014) "faith-based policy" initiatives for prevention of corporal punishment of children in relation to Conservative Christians who most strongly approve of and use corporal punishment in the US. Overall, understanding the domestic politics of the implementation of the CRC and interactions between state and civil society actors and the general public is important for the relevance of law reform to children's lives (Grugel and Peruzzotti, 2012).

Ultimately, continued efforts in the face of obstacles are more than warranted,

> (a)s stated by Luigi Ferrajoli, to make true democracy, to take seriously the fundamental rights which are solemnly proclaimed in our

constitutions and international declarations means today to put an end to the apartheid that excludes large four-fifths of mankind (as cited in Morlachetti 2010:9).

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