

It takes a SMECC to raise a child: Meeting basic developmental needs of newborn persons

Citation for published version (APA):

Willems, J. C. M. (2012). It takes a SMECC to raise a child: Meeting basic developmental needs of newborn persons: Principles and promises in the Convention on the Rights of the Child and the Convention on the Rights of Persons with disabilities. In L. Waddington, G. Quinn, & E. Flynn (Eds.), *European Yearbook of Disability Law* (1 ed., pp. 59-100). Intersentia. *European Yearbook of Disability Law* Vol. 3

Document status and date:

Published: 01/01/2012

Document Version:

Accepted author manuscript (Peer reviewed / editorial board version)

Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

www.umlib.nl/taverne-license

Take down policy

If you believe that this document breaches copyright please contact us at:

repository@maastrichtuniversity.nl

providing details and we will investigate your claim.

It takes a SMECC to raise a child – Meeting Basic Developmental Needs of Newborn Persons

Principles and Promises in the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities

Jan CM Willems¹

An earlier version of this article (without the Appendix) has appeared in: Lisa Waddington, Gerard Quinn, Eilionoir Flynn (eds.), *European Yearbook of Disability Law – Volume 3*, Intersentia, Cambridge (etc.) 2012, pp. 59-100

‘There is probably no other field that more challenges the reluctance of individuals to have their illusions shattered and face the capacity for inhumanity that pervades many people’s lives than the area of childhood abuse.’ (Alexander McFarlane²)

‘[I]mproving parenting skills will be a core feature of primary prevention in the future of medicine and psychiatry.’ (Vincent Felitti³)

ABSTRACT

What are children’s basic developmental needs, especially in early childhood? And how can these needs best be addressed to the benefit of all children, including children with specific needs? Which human rights norms provide us with guidance and tools to explore and improve the social and legal position of all young children, including children with disabilities, so as to guarantee to each of them the best possible start in life? These questions are dealt with in two parts. In part one, a general introduction to the theme of basic developmental needs of young children is presented. In part two, a broad and comprehensive approach is proposed towards meeting these needs, for which the acronym SMECC is introduced. SMECC refers to an integrated ‘big five’ of child rights based child and family laws and policies (viz., School

¹ Dr Jan C. M. Willems is a researcher of Children’s rights and human development at Maastricht University, The Netherlands, a former professor of Children’s rights at VU University Amsterdam, and author and editor of several books and articles on children’s rights, early childhood and child abuse and neglect. His main research interests are the rights of newborn persons and the structural prevention of child maltreatment (especially attachment security as a human right and child rights based standards for competent and responsible parenthood). Email address: <j.willems@maastrichtuniversity.nl>.

² A. McFarlane, ‘Synopsis Part 1,’ in: R. A. Lanius et al. (eds.), *The Impact of Early Life Trauma on Health and Disease: The Hidden Epidemic*, (Cambridge University Press, 2010), 43–47, at 46.

³ V. J. Felitti, ‘Foreword,’ in: R. A. Lanius et al. (eds.), *The Impact of Early Life Trauma*, xiii–xv, at xiv.

child rights and parenthood education, a legal Minimum standard for competent parenthood, child rights and parenting Education for parents-to-be, Child- and family-friendly social and economic policies, and a high-quality Continuum of care for children and families). In both parts of this contribution, the principles and promises contained in the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities are highlighted, whereby special reference is made to the views of the Committee on the Rights of the Child.

1. INTRODUCTION

This contribution stems from the premise that from the perspectives of non-discrimination and inclusion, meeting the basic developmental needs of all infants and preschool children is the optimum starting point for discerning, understanding and addressing their specific needs. This of course includes children with disabilities, and children with parents with disabilities. This raises two main questions: what are young children's basic developmental needs? And how can these needs best be addressed to the benefit of all children, including children with additional specific needs? A third question is closely related to both: which human rights norms provide us with guidance and tools to explore and improve the social and legal position of all young children, including children with disabilities, and children with parents with disabilities?

This paper deals with these questions in two parts. Part one presents a general introduction to the theme of basic developmental needs of young children, based on levels of neurobiological and psychological knowledge – with a special reference to high-income states, specifically those within the European Union (EU). Part two proposes a broad and comprehensive approach towards meeting the basic developmental needs of young children in high-income (EU member) states. This approach is a synthesis of the literature on international and national developments – of an academic, professional, governmental, intergovernmental and non-governmental nature – in relation to the structural prevention of child abuse and neglect. Therefore, another term for this structural preventative approach is structural prevention of child abuse and neglect, or child maltreatment. In this contribution, child maltreatment is treated as a broad concept encompassing all forms of developmental damage of children, especially in infancy and early childhood, which could, in principle, have been prevented if parents had been better screened, informed and supported.

For the proposed system of structural prevention in part two, the acronym SMECC is introduced. SMECC refers to an integrated 'big five' of child-rights-based child and family laws and policies: School child rights and parenthood education, a legal Minimum standard for competent parenthood, child rights and parenting Education for parents-to-be, Child- and family-friendly social and economic policies, and a high-quality Continuum of care for

children and families. Part two begins with a short analysis of the historical stages of development of children's rights. It will be argued that SMECC laws and policies are rooted in the post-patriarchal, so-called conventional period, but as a whole reflect evolving post-parentiarchal, or post-conventional, values. As will be elaborated later, *patriarchy* refers to women and children being the 'possession' of their husbands and fathers, whereas *parentiarchy* refers to children being the 'possession' of their parents.

In both parts of this contribution, human rights norms, that is, the principles and promises contained in the Convention on the Rights of the Child (CRC, 1989) and the Convention on the Rights of Persons with Disabilities (CRPD, 2006), are summarily highlighted by making reference to the relevant treaty provisions in these two conventions. Throughout, special reference is made to the views of, and the state of the law as expressed by, the Committee on the Rights of the Child in its latest General Comment, General Comment No. 13, on violence against children, adopted on 17 February 2011. The Committee is quoted on several points, especially with regard to the best interests of the child, developmental harm, and disability. In this contribution, 'principles and promises' refer to both established and evolving standards, as elucidated, *inter alia*, in the General Comments of the Committee on the Rights of the Child, awaiting effective implementation in national laws and policies. The main aim of this contribution is to present a broad overview and a general introduction to the area, rather than an in-depth legal analysis of the issues at stake. It is written in relation to all children and all parents, including those with disabilities in the broadest sense, with special reference to parents-to-be, infants, and first or new parents, based on recent developments in law and literature within the fast-growing field of child rights and human development studies.

2. PART 1: BASIC DEVELOPMENTAL NEEDS OF YOUNG CHILDREN

Part one consists of three sections. The first section explores the extremely vulnerable position of newborn persons from a neurobiological, psychological, and critical child rights perspective. The second section presents a brief overview of pertinent CRC and CRPD principles and provisions. The third section recaptures and summarizes the theme of basic developmental needs.

2.1. NEWBORN PERSONS

According to the preamble of the Convention on the Rights of Persons with Disabilities (UN 2006; hereafter CRPD⁴), sub. (e), 'disability is an evolving concept' and 'results from the

⁴ For text, see:

<<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#8>> (accessed 25 May 2011); for states parties (including formal confirmation by the European Union), see:

interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.’ This refers to persons of all ages – including young children, who are the subject of this contribution. Children are persons below the age of eighteen years.⁵ The focus in this paper is on newborn persons, that is, children aged between minus nine months and two to three years (infancy, early childhood, first years of life). The prenatal period is included in this definition without prejudice to a woman’s legal right to have her pregnancy terminated (as regulated by national law). The Convention on the Rights of the Child (UN 1989; hereafter CRC⁶) refers to the prenatal period in its preamble (ninth paragraph) and in Article 24 on the right to health. Although a prenatal right to life does not exist in international law (the born child’s right to life is codified in Article 6 para. 1 CRC), strong arguments can be made for a prenatal right to survival and development (Article 6 para. 2 CRC), that is, a right to prenatal – or even pre- or periconceptual – care and protection (ninth preambular paragraph *juncto* Article 18 para. 2, Article 19, Article 24, and Article 27 para. 3 CRC).⁷

2.1.1. Structural disrespect

The focus on newborn persons, as defined above, has been chosen because newborn persons are both extremely vulnerable, in a physical, neurological, psychological and, generally, developmental sense, and poorly protected by the law – even in high-income states, including those in the European Union (hereafter EU).⁸ Although the law in high-income states imposes far-reaching responsibilities on parents,⁹ their competence to meet even a minimum core of those responsibilities is not tested, and there is no legal requirement for them to be prepared and educated to perform the role of a parent, and to actively seek appropriate support. Child protection laws cannot compensate for this structural disrespect of the rights of newborn

<http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en> (accessed 25 May 2011).

⁵ See Article 1 of the Convention on the Rights of the Child (UN, 1989), <www2.ohchr.org/english/law/crc.htm> (accessed 25 May 2011).

⁶ For text, see <www2.ohchr.org/english/law/crc.htm> (accessed 25 May 2011); for states parties (193), see <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en> (accessed 25 May 2011). Dutch-speaking lawyers often refer to the CRC as ‘International Convention on the Rights of the Child’ (ICRC; in Dutch: IVRK), which, however, is not recommendable: see J. C. M. Willems, ‘Book Review (A. Alen et al. (eds.), *The UN Children’s Rights Convention: Theory Meets Practice*),’ 28 *Netherlands Quarterly of Human Rights* 2 (2010), 298–305, at 301.

⁷ Cf. R. Hodgkin and P. Newell, *Implementation Handbook for the Convention on the Rights of the Child: Fully Revised Third Edition*, (Unicef, 2007), 2, 80, 83–93, 80, 237–238, 258–259, 265–269, 363, 397–401. And see J. C. M. Willems, ‘Introduction,’ in: J. C. M. Willems (ed.), *Children’s Rights and Human Development: A Multidisciplinary Reader*, (Intersentia, 2010), 1–44 at 2, 24–25. The CRC’s ninth preambular paragraph contains the famous ‘before as well as after birth’ proviso, restated from the 1959 UN Declaration of the Rights of the Child.

⁸ See J. G. Dwyer, ‘The Child Protection Pretense: States’ Continued Consignment of Newborn Babies to Unfit Parents,’ 93 *Minnesota Law Review* 2 (2008), 407–492, at 428–435 (‘Why newborns are different’), <<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1032&context=facpubs>> (accessed 25 May 2011). Also see R. A. Lanius et al. (eds.), *The Impact of Early Life Trauma*.

⁹ See, e.g., Article 247(2), Book 1, Dutch Civil Code: ‘Caring for and raising one’s child includes the care and the responsibility for the emotional and physical well-being of the child and for his or her safety as well as for the promotion of the development of his or her personality. In the care and upbringing of the child the parents will not use emotional or physical violence or any other humiliating treatment.’

persons.¹⁰ As a consequence, even in high-income states, including those in the EU, roughly one in three children are not securely attached to their carers,¹¹ and roughly one in five children in high-income states are maltreated by their caregivers (one in ten per year,¹² one in five during childhood¹³). Among the known results are antisocial behaviour,¹⁴ crime (notably violent and hate crime) and welfare dependency,¹⁵ poor physical and poor mental health¹⁶ – including addictions, social problems,¹⁷ and destructive relationships¹⁸ leading to domestic violence or divorce – and, generally speaking, transgenerational traumatization and deprivation,¹⁹ putting an economic burden on high-income states of billions of euro a year.²⁰

¹⁰ See H. LaFollette, 'Licensing Parents Revisited,' 27 *Journal of Applied Philosophy* 4 (2010), 327–343, <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5930.2010.00497.x/pdf>> (accessed 25 May 2011); J. G. Dwyer, 93 *Minnesota Law Review* 2 (2008), 407–492; J. G. Dwyer, 'A Constitutional Birthright: The State, Parentage, and the Rights of Newborn Persons,' 56 *UCLA Law Review* 4 (2009), 755–835, <<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1031&context=facpubs>> (accessed 25 May 2011).

¹¹ See Encyclopedia on Early Childhood Development, *Synthesis on attachment*, (Centre of Excellence for Early Childhood Development, 2006), <www.child-encyclopedia.com/pages/PDF/synthesis-attachment.pdf> (accessed 25 May 2011).

¹² See, for high-income countries: R. Gilbert et al., 'Burden and consequences of child maltreatment in high-income countries,' 373 *The Lancet* 9657 (2009), 68–81, <[www.thelancet.com/journals/lancet/article/PIIS0140-6736\(08\)61706-7/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(08)61706-7/fulltext)> (accessed 25 May 2011) (<www.thelancet.com> (accessed 25 May 2011), Series Child Maltreatment No. 1, published online 3 December 2008).

¹³ See, for the US: D. Finkelhor et al., 'Children's Exposure to Violence: A comprehensive National Survey [NatSCEV],' *Juvenile Justice Bulletin*, (Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, 2009), <www.unh.edu/ccrc/pdf/DOJ-NatSCEV-bulletin.pdf> (accessed 25 May 2011); for the UK: NSPCC, *Child cruelty in the UK 2011: An NSPCC study into childhood abuse and neglect over the past 30 years*, (NSPCC, 2011), <www.nspcc.org.uk/news-and-views/our-news/nspcc-news/11-02-15-report-launch/overview-report_wdf80875.pdf> (accessed 25 May 2011); for the Netherlands: F. Lamers-Winkelmann et al., *Scholieren Over Mishandeling; Resultaten van een landelijk onderzoek naar de omvang van kindermishandeling onder leerlingen van het voortgezet onderwijs*, (PI Research, Vrije Universiteit Amsterdam, 2007), <www.wodc.nl/onderzoeksdatabase/1172a-omvang-kindermishandeling.aspx> (accessed 25 May 2011), (including Summary: *Pupils on Abuse*).

¹⁴ See M. Jonson-Reid et al., 'Effects of child maltreatment and inherited liability on antisocial development: an official records study,' 49 *Journal of the American Academy of Child & Adolescent Psychiatry* 4 (2010), 321–332 (abstract at <[www.jaacap.com/article/S0890-8567\(10\)00073-0/abstract](http://www.jaacap.com/article/S0890-8567(10)00073-0/abstract)> (accessed 25 May 2011)). For a summary in Dutch, by M.A. J. Raaijmakers, 'Samenvattingen,' 18 *Kind en Adolescent Review* 1 (2011), 100–104.

¹⁵ See J. C. Westman, *Breaking the Adolescent Parent Cycle: Valuing Fatherhood and Motherhood*, (University Press of America, 2009).

¹⁶ See D. P. Keating and C. Hertzman (eds.), *Developmental Health and the Wealth of Nations*, (The Guilford Press, 1999); R. Weehuizen, *Mental capital: The economic significance of mental health*, PhD Maastricht University, (Universitaire Pers, 2008).

¹⁷ See R. Anda, *The Health and Social Impact of Growing up with Adverse Childhood Experiences: The Human and Economic Costs of the Status Quo*, (ACE Study, 2007); V. J. Felitti, *The Relationship of Adverse Childhood Experiences to Adult Health: Turning Gold into Lead*, (ACE Study, 2002); V. J. Felitti, *The Origins of Addiction: Evidence from the Adverse Childhood Experiences Study*, (ACE Study, 2004), available at <www.acestudy.org> (accessed 25 May 2011), V. J. Felitti and R. F. Anda, 'The relationship of adverse childhood experiences to adult medical disease, psychiatric disorders and sexual behaviour: implications for healthcare,' in: R. A. Lanius et al. (eds.), *The Impact of Early Life Trauma*, 77–87.

¹⁸ Cf. Ottawa Couple and Family Institute (OCFI; <www.ocfi.ca> (accessed 25 May 2011)) and the International Centre for Excellence in Emotionally Focused Therapy (ICE-EFT; <www.iceeft.com> (accessed 25 May 2011)); selected articles by Dr. Sue Johnson (available at: <www.ocfi.ca> (accessed 25 May 2011)). Emotionally Focused Therapy is based on attachment theory. Also see S. Johnson, *Hold Me Tight: Seven Conversations for a Lifetime of Love*, (Little, Brown and Company, Hachette Book Group, 2008).

¹⁹ See J. C. M. Willems, Chapters 4–6, in: J. C. M. Willems (ed.), *Developmental and Autonomy Rights of Children: Empowering Children, Caregivers and Communities (second revised edition)*, (Intersentia, 2007), 65–172.

Westman estimates that in the United States, four percent of parents are ‘incompetent’ (that is, ‘unable to manage their own lives, much less the lives of children [...] [e]ven with support and treatment’) and that the costs to society of the ‘incompetent parenting’ of a child (estimated at 2 million dollars) equal the benefits to society of the competent parenting of two other children.²¹

2.1.2. Committee on the Rights of the Child

The issues mentioned above are the subject of the latest General Comment (No. 13, on violence against children) of the Committee on the Rights of the Child.²² In this General Comment, adopted on 17 February 2011, the Committee first of all addresses the seriousness of the problem of violence against children:²³

The Committee on the Rights of the Child [...] issues the present General Comment on Article 19 of the Convention on the Rights of the Child [...], since the extent and intensity of violence exerted on children is alarming. Therefore, measures to end violence have to be massively strengthened and expanded in order to effectively put an end to these practices which jeopardize children’s development and societies’ non-violent potentials for conflict resolution.

The Committee on the Rights of the Child includes all forms of child maltreatment in its definition of violence against children:²⁴

For the purposes of this General Comment, ‘violence’ is understood to mean ‘all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse’ as listed in paragraph 1 of Article 19 [CRC]. The term ‘violence’ has been chosen here to represent all forms of harm to children as listed in paragraph 1 of Article 19, in conformity with the terminology used in the 2006 *UN Study on Violence against*

²⁰ Cf. R. M. Kuiper et al., *A first hypothetical estimate of the Dutch burden of disease in relation to negative experiences during childhood*, (TNO Quality of Life, Report and Factsheet, 2010), (<www.tno.nl> (accessed 25 May 2011), <www.lcv.nl> (accessed 25 May 2011), <www.augeo-foundation.nl> (accessed 25 May 2011), to be published online, partly available at:

<<http://media.rtl.nl/media/actueel/rtlnieuws/2010/rapportkindermishandeling.pdf>> (accessed 25 May 2011)); C.-T. Wang and J. Holton, *Total Estimated Cost of Child Abuse and Neglect in the United States*, Economic Impact Study, (Prevent Child Abuse America, 2007), <www.preventchildabuse.org/about_us/media_releases/pcaa_pew_economic_impact_study_final.pdf> (accessed 25 May 2011).

²¹ J. C. Westman, *Licensing Parents: Can We Prevent Child Abuse and Neglect?*, (Perseus Publishing, 1994), 2–3, 29.

²² Committee on the Rights of the Child, General Comment No. 13 (2011), Article 19 [CRC]: The right of the child to freedom from all forms of violence, available at <www2.ohchr.org/english/bodies/crc/comments.htm> (accessed 25 May 2011).

²³ General Comment No. 13, para. 1 (Rationale).

²⁴ General Comment No. 13, para. 3 (Definition of violence). For an extensive, non-exhaustive list of forms of violence, see para. 18–30 (Legal analysis of Article 19 [CRC]: ‘all forms of...’). For the *UN Study on Violence against Children*, see <www.unviolencestudy.org> (accessed 25 May 2011).

Children, although the other terms used to describe types of harm (injury, abuse, neglect or negligent treatment, maltreatment and exploitation) carry equal weight. As in common parlance the term ‘violence’ is often understood to mean only ‘physical’ harm and/or ‘intentional’ harm. However, the Committee emphasises most strongly that the choice of the term ‘violence’ in the present General Comment must not be used in any way to minimise the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as neglect and psychological maltreatment, *inter alia*).

In relation to newborn persons (babies and young children), and children with disabilities, the Committee remarks:²⁵

Babies and young children are at higher risk due to the immaturity of their developing brain and their complete dependency on adults. Both girls and boys are at risk, but violence often has a gender component. [...] Groups of children which are likely to be exposed to violence include, but are not limited to children: [...] with physical disabilities, sensory disabilities, learning disabilities, psycho-social disabilities and congenital, acquired and/or chronic illnesses or serious behavioural problems [...].

It is interesting to note that Article 16 CRPD – on ‘Freedom from exploitation, violence and abuse’ for persons with disabilities, both within and outside the home – obliges States Parties ‘to take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities *and their families and caregivers*’ (Article 16 para. 2 CRPD; emphasis added). Article 16 para. 5 CRPD specifically calls for ‘women- and child-focused legislation and policies.’ (Article 16 para. 4 CRPD, which deals with recovery and social re-integration after violence, restates the example set in Article 39 CRC.) In case of doubt as to which standard prevails (in CRPD, CRC as interpreted by the Committee on the Rights of the Child, or other national or international instrument), Article 41 CRC provides that the highest standard is applicable, either in the domestic law of a State party (all states are parties to the CRC with the exceptions of Somalia and the US²⁶), or in international law in force for that State:

Article 41 CRC – Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

²⁵ General Comment No. 13, para. 65 sub. (f) (Risk factors), and para. 65 sub. (g) (Children in potentially vulnerable situations), respectively.

²⁶ Both states signed the Convention but still have to ratify it (after which the CRC will be a universally binding instrument); see <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en> (accessed 25 May 2011).

- (a) The law of a State party; or
- (b) International law in force for that State.

The Committee on the Rights of the Child also addresses the impact of violence against children and child maltreatment, and points out several health and (antisocial) behavioural consequences:²⁷

Children's survival and their 'physical, mental, spiritual, moral and social development' (Article 27 para. 1 [CRC]) are severely negatively impacted by violence.

- a) The short- and long-term health consequences of violence against children and child maltreatment are widely recognized. They include: fatal injury; non-fatal injury (possibly leading to disability); physical health problems (including failure to thrive, later lung, heart and liver disease and sexually transmitted infections); cognitive impairment (including impaired school and work performance); psychological and emotional consequences (such as feelings of rejection and abandonment, impaired attachment, trauma, fear, anxiety, insecurity and shattered self-esteem); mental health problems (such as anxiety and depressive disorders, hallucinations, memory disturbances and suicide attempts); health-risk behaviours (such as substance abuse and early initiation of sexual behaviour).
- b) Developmental and behavioural consequences (such as school non-attendance and aggressive, anti-social, self-destructive and inter-personal destructive behaviours) can lead, *inter alia*, to deterioration of relationships, exclusion from school and coming into conflict with the law. There is evidence that exposure to violence increases a child's risk of further victimisation and an accumulation of violent experiences, including later intimate partner violence.

Lastly, as to the human, social and economic costs, the Committee observes:²⁸

The human, social, and economic costs of denying children's rights to protection are enormous and unacceptable. Direct costs may include medical care, legal and social welfare services and alternative care. Indirect costs may include possible lasting injury or disability, psychological costs or other impacts on a victim's quality of life, disruption or discontinuation of education and productivity losses in the future life of the child. They also include costs associated with the criminal justice system as a result of crimes committed by children who have experienced violence.

²⁷ General Comment No. 13, para. 14 (Survival and development – the devastating impact of violence against children).

²⁸ General Comment No. 13, para. 15 (The cost of violence against children).

Although the Committee refers to ‘parental risk factors such as substance abuse, mental health problems and social isolation, as well as family risk factors such as poverty, unemployment, discrimination and marginalization,’²⁹ the problem of parental incompetence – of parents who ‘are unable to manage their own lives, much less the lives of children [...] [e]ven with support and treatment’³⁰ – is not explicitly addressed. Let us, therefore, return to that point now.

2.1.3. Inhuman treatment

It is submitted, first of all, that a distinction should be made between absolute and relative parental incompetence. One to five percent of biological parents may be absolutely incompetent, that is, not able to meet a minimum standard (dependent on its rigidity), but another ten to twenty percent are relatively incompetent, that is, would probably not have caused developmental damage to occur to their children if they had timely and adequate information, counselling or support.³¹ Secondly, it is submitted that putting a baby under the care of parents whom the state knows, or should know, to be absolutely incompetent, may be seen – by analogy with the case of *A. v. the United Kingdom*³² – as a violation of Article 3 of the European Convention on Human Rights (ECHR), that is, as a form of inhuman treatment. In *A. v. UK*, the European Court of Human Rights found the United Kingdom to be in breach of Article 3 ECHR because its domestic law failed to provide children with adequate protection. UK law allowed (and still allows³³) parents to ‘reasonably’ chastise their children. However, even severe forms of chastisement were considered to be reasonable. It is submitted here that, if laws that allow children to be (severely) hit by their parents are deemed to be inhuman, then certainly laws that allow babies to be put under the care of (absolutely) incompetent parents should be considered to be inhuman, and thus in violation of Article 3 ECHR, as well. This point may even be taken a step further. Not only should such parentage

²⁹ General Comment No. 13, para. 65 sub. (f) (Risk factors).

³⁰ J. C. Westman, *Licensing Parents*, 29.

³¹ These approximations are based on data on the scope of child maltreatment, on which see R. Gilbert et al., 373 *The Lancet* 9657 (2009), 68–81; for the US: D. Finkelhor et al., *Juvenile Justice Bulletin*; for the UK: NSPCC, *Child cruelty in the UK 2011: An NSPCC study into childhood abuse and neglect over the past 30 years*; for the Netherlands: M. H. van IJzendoorn et al., *Kindermishandeling in Nederland anno 2005: De Nationale Prevalentiestudie Mishandeling van kinderen en jeugdigen [NPM-2005]*, (Casimir Publishers, 2007), <www.leidenattachmentresearchprogram.eu> (accessed 25 May 2011), short version: <www.leidenattachmentresearchprogram.eu/NPM-2005-Van-IJzendoorn-boek.pdf> (accessed 25 May 2011) (summary, 15–16); English abstract, <www.leidenattachmentresearchprogram.eu/NPM-2005-Van-IJzendoorn-abstract-EN.pdf> (accessed 25 May 2011); F. Lamers-Winkelmann et al., *Scholieren Over Mishandeling; Resultaten van een landelijk onderzoek naar de omvang van kindermishandeling onder leerlingen van het voortgezet onderwijs*; L. Alink et al., *Kindermishandeling in Nederland anno 2010: De Tweede Nationale Prevalentiestudie Mishandeling van kinderen en jeugdigen [NPM-2010]*, (Casimir Publishers, 2011), <www.leidenattachmentresearchprogram.eu> (accessed 27 November 2011); R. M. Kuiper et al., *A first hypothetical estimate of the Dutch burden of disease*.

³² *A. v. the United Kingdom*, Application No. 25599/94, judgment 23 September 1998, Reports 1998-VI (<www.echr.coe.int/echr> (accessed 25 May 2011)).

³³ See M. D. A. Freeman, ‘Upholding the dignity and best interests of children: international law and the corporal punishment of children,’ 73 *Law and Contemporary Problems* 2 (2010), 211–251, at 235, <www.law.duke.edu/journals/lcp> (accessed 25 May 2011).

laws be seen as inhuman, but so too should child protection laws that allow the state to intervene only after babies have been severely damaged by incompetent parents.³⁴

2.1.4. Parent-child interaction, 'best interests' and participation

In the first years of human existence, the interaction between parents (and other carers) and infants is crucial for brain development and development of attachment security.³⁵ These, in turn, are crucial for healthy holistic (physical-emotional-social-moral-cognitive) child development and development of a child's personal autonomy, including – as the CRPD's preamble stipulates – 'full and effective participation' in family, school, community and, later on, society.³⁶ Healthy holistic development and the development of personal autonomy overlap.³⁷ In child rights terminology, participation of the child is 'part and parcel' of the child's best interests. However, this is a psychological view, and not necessarily the accepted view in the child rights community, where both principles are still often seen as antithetical.³⁸ This may be explained by the fact that, traditionally, the 'best interests' of a child are defined by the parents or other adults, rather than being informed by neurobiological, psychological or other research and guided by evidence-based testing. The participation principle, therefore, is seen as an emancipatory vehicle for the image and status of the child as a subject of rights, as opposed to the image and status of the child as an object of parental and adult protection based on the traditional power of definition of adults and/or parents. However, the vital importance of the prenatal period and the first year(s) of life for a child's 'full and effective participation' in family, school, community, and society – based on and crucial for his or her 'evolving capacities and progressive autonomy'³⁹ – does not always seem to be fully understood. This state of affairs appears to be changing, albeit slowly, not only in the child rights community but also among legislators. As Dwyer remarks:⁴⁰

[L]egislators absorb new social scientific knowledge rather slowly, and child maltreatment and early child development have not been subjects of robust research for very long. Only recently have legislators come to understand the vital importance for babies of attachment, bonding, and freedom from trauma and, correspondingly, the seriously adverse effects on infants of both indifferent or

³⁴ For a parallel line of reasoning and an in-depth analysis, based on US constitutional and family law, see J. G. Dwyer, 56 *UCLA Law Review* 4 (2009).

³⁵ See J. G. Dwyer, 93 *Minnesota Law Review* 2, 407–492, at 415–428 ('Newborns' developmental needs'); D. P. Keating, 'Introduction,' in: D. P. Keating (ed.), *Nature and Nurture in Early Child Development*, (Cambridge University Press, 2011), 1–6. Also see, e.g., B. D. Perry and M. Szalavitz, *The boy who was raised as a dog: What traumatized children can teach us about loss, love and healing*, (Basic Books, 2006); M. Szalavitz and B. D. Perry, *Born for Love: Why Empathy is Essential – and Endangered*, (HarperCollins, 2010).

³⁶ See J. C. M. Willems, chapters 4–6, in: *Developmental and Autonomy Rights of Children*, 65–172.

³⁷ This is not to say that a person is not healthy if he or she is not (fully) autonomous. See, e.g., B. Rogoff, *The Cultural Nature of Human Development*, (Oxford University Press, 2003).

³⁸ D. Archard, for instance, states that the commitments of Article 3 CRC, that is, the best interests principle, are 'protectionist and paternalistic,' as opposed to those of Article 12 CRC, that is, the child participation principle (D. Archard, 'Preface,' in: F. Ang et al., *Participation Rights of Children*, (Intersentia, 2006), v–viii, at viii).

³⁹ Cf. Committee on the Rights of the Child, General Comment No. 13, para. 31 (Definition of 'caregivers').

⁴⁰ J. G. Dwyer, 56 *UCLA Law Review* 4 (2009), 755–835, 808.

abusive parenting and foster care. [...] At most there is a belief, primarily among liberals, that the state owes struggling parents assistance in becoming fit so long as that does not entail sacrificing the welfare of children, coupled with an unawareness of or reluctance to admit the damage instability can have on an infant.

The critical importance of the prenatal period and the first year(s) of life justifies seeing newborn persons as a category of persons in their own right, as a class of children separate from all other children. Therefore, it is submitted here that, from a psychological and pedagogical perspective, there are two main categories of children: infants, who need care and affection, and older children, who need care and affection as well as direction and guidance, up to and including making their own decisions, for which the CRC uses the evolving capacities paradigm, and of course the fundamental principle of participation, in Article 5 and Article 12, respectively. These interrelated issues will be discussed further in the next section on CRC and CRPD principles.

2.2. CRC AND RELATED CRPD PRINCIPLES AND PROVISIONS

In this section, the main child rights concepts or principles, and the provisions in which they are codified or which relate to them, are briefly highlighted with special reference to their CRPD counterparts, and, on an elementary level and in an exploratory manner, discussed from a newborn persons' rights perspective. It should be reminded here, however, that in actual cases those provisions prevail that are most conducive to the realisation of the rights – that is, the 'holistic development' (see below) – of the child, whether they are contained in the national law of a state or in international law (e.g., in the CRPD or any other treaty) in force for that state (see Article 41 CRC, quoted above).

2.2.1. *Holistic development: the CRC's object and purpose*

Healthy (holistic, harmonious) child development may be seen as the object and purpose of the CRC. *Holistic*, a term used by the Committee on the Rights of the Child,⁴¹ refers to both physical – first of all, early brain – development and mental development. The latter includes emotional development (first of all, a secure attachment development in infants and young children), intellectual or cognitive development, and social, moral, spiritual and cultural development (see Articles 27 para. 1; 29 para. 1 sub. (a); 23 para. 3; and 32 para. 1 CRC). The interaction between all these aspects, rather than their sum or combination, determines holistic

⁴¹ See, e.g., Committee on the Rights of the Child, General Comment No. 13 (2011), Article 19 [CRC]: The right of the child to freedom from all forms of violence (<www2.ohchr.org/english/bodies/crc/comments.htm> (accessed 25 May 2011)), para. 55 (Article 6 [CRC]: Life, survival and development): 'The Committee expects States to interpret 'development' in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development.'

development. The conditions that have to be met in order to achieve holistic development are precisely those which, in the author's view, constitute the principle of the best interests of the child. Child participation, it is submitted, both inside and outside the family, is an inherent dimension of both.

2.2.2. The best interests of the child and participation

The idea of 'the best interests of the child' as a traditional concept viewing children as objects of charity and of protection 'for their own good' and 'in their best interest' is often opposed to child participation, or even to the whole concept of children being subjects of rights.

However, if one starts from the premise that children are the subjects of rights, as the CRC does, then both participation and promotion and protection of 'best interests' are child rights. Today, the general opinion appears to be that the concept of the child being a subject of rights includes the concept of participation, and that both concepts are of an international *lex lata* nature, meaning that states are under an international obligation to implement these concepts into their national legal system. It is submitted here that both concepts may – and should – be seen as central to the child's best interests. From a child and human development point of view, being a subject of rights and a responsible participant – that is, being seen and treated as a subject of rights in family, school, community and society, including rights and personal responsibilities related to one's active membership of these entities – is central to the healthy development of one's personality and the development of prosocial ('positive') behaviour and democratic citizenship. And that is precisely what, in the present author's view, the child's best interests principle is about: healthy holistic – physical-emotional-social-moral-intellectual – development, including the development of prosocial behaviour and democratic citizenship (see, e.g., Article 27 para. 1 and Article 29 para. 1 CRC). If we take this one step further, the best interests principle probably captures the essence, or object and purpose, of the CRC better than any other principle or combination of principles.

The best interests principle and its unique prioritized nature are codified in Article 3 para. 1 (for parents, Article 18 para. 1) of the CRC. The participation principle is codified in Article 12 (for parents, Article 5) of the CRC and elaborated by the Committee on the Rights of the Child in its General Comment No. 12 of 2009.⁴² Both principles are re-codified in Article 7, *vis-à-vis* children with disabilities, of the CRPD, in para. 2 and para. 3, respectively. Interestingly, Article 7 para. 3 CRPD adds a positive obligation on the state to provide children with disabilities with disability- and age-appropriate assistance to realize their right to express their views.⁴³ Article 7 para. 1 CRPD recalls the non-discrimination principle of

⁴² Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard (available at <www2.ohchr.org/english/bodies/crc/comments.htm> (accessed 26 May 2011)). A General Comment on Article 3 is in preparation (see the provisional agenda of the Committee on the Rights of the Child for its 56th session, January/February 2011, sub. 8), <www2.ohchr.org/english/bodies/crc/docs/provisional_agenda_CRC56.pdf> (accessed 26 May 2011).

⁴³ An important element of participation is the child's right to be consulted on and involved in policy-making and other decision-making processes, on which see Article 4 (General obligations) para. 3 CRPD.

Article 2 CRC, which already explicitly refers to disability as a forbidden ground of discrimination. However, it differs in its positive formulation of an ‘equal basis’ provision.⁴⁴ Article 7 CRPD reads as follows:

Article 7 (Children with disabilities) – 1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Of the four general principles of the CRC⁴⁵ – non-discrimination (Article 2 CRC); prioritization of the child’s safety, health and development (best interests of the child: Article 3 CRC); the right to life, survival and development (Article 6 CRC); and participation (respect for the views of the child: Article 12 CRC) – only the right to survival and development, to the maximum extent of a state’s resources (Article 6 para. 2 *juncto* Article 4 CRC), is not re-codified in the CRPD (for the right to life see Article 10 CRPD). However, survival and development, as well as participation, may be seen as being included in the holistic development concept of the best interests of the child, as described above. Moreover, the CRPD codifies several general principles in its Article 3, the last of which specifically deals with children. It reads as follows:

Article 3 (General principles) – The principles of the present Convention shall be:
(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Respect for the child’s evolving capacities and identity preservation is closely linked to the child’s holistic development as well. In the CRC, respect for evolving capacities is part of parental responsibility – to be respected and promoted⁴⁶ by the state – to provide the child

⁴⁴ Also see the CRPD’s preambular paragraph (r), which refers back to the CRC.

⁴⁵ See the Committee on the Rights of the Child’s *Reporting Guidelines* (Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1(b), of the CRC), 2010, paragraph 23.

⁴⁶ See Article 18 para. 2 CRC: ‘States Parties shall render appropriate assistance to parents [...] in the performance of their child-rearing responsibilities [...]’ *Cf.* also Article 23 para. 2 CRPD: ‘States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.’

with affection-based⁴⁷ direction and guidance (Article 5 CRC). Identity preservation is a specific right of the child under Article 8 CRC.

2.2.3. *Committee on the Rights of the Child*

In its latest General Comment (adopted on 17 February 2011),⁴⁸ the Committee on the Rights of the Child

emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention.

This holistic stance on the best interests of the child expressly includes the child's right to participation:⁴⁹

Respect for the dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a rights-bearing person should be established and championed as the pre-eminent goal of States Parties' policies concerning children. This is best realised through respecting, protecting and fulfilling all of the rights in the Convention (and its Optional Protocols). It requires a paradigm shift away from child protection approaches in which children are perceived and treated as 'objects' in need of assistance rather than as rights holders entitled to non-negotiable rights to protection.

The Committee goes on to define a child rights approach by referring to six (out of eight⁵⁰) CRC articles and/or principles, including participation (Article 12):⁵¹

⁴⁷ See sixth preambular paragraph CRC, which refers to a child's developmental need to 'grow up in a family environment, in an atmosphere of happiness, love and understanding.' Love is not typically a word one would find in a legal document; for children, however, love – or affection – is a basic developmental need.

⁴⁸ General Comment No. 13, para. 54 (Article 3 [CRC]: Best interests of the child).

⁴⁹ General Comment No. 13, para. 52 (Definition of a child rights approach). Also see para. 65 sub. (a) (Child rights approach): 'This approach is based on the declaration of the child as a rights holder and not a beneficiary of benevolent activities of adults.'

⁵⁰ Article 3 CRC may be said to contain not one but three principles: (1) the best interests of the child (Article 3 para. 1 CRC); (2) the *Trias pedagogica* principle (Article 3 para. 2 CRC); and (3) the professionalization principle (Article 3 para. 3 CRC): see J. C. M. Willems, 'Opvoeding en ouderschap op basis van kinderrechten – het VRK-driegrachtenmodel: een breed zorgcontinuüm,' in: W. Vandenhole (ed.), *Kinderrechten in België*, (Intersentia, 2008), 163–180 (not yet available in an English version, but cf. J. C. M. Willems, *Children's Rights and Human Development*, 1–44, at 28–32).

⁵¹ *Ibid.* Also see para. 57–59 on two other CRC articles with 'all-embracing relevance': Article 4 (Appropriate measures), and Article 5 (Direction and guidance consistent with evolving capacities).

A child rights approach is one which furthers the realisation of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (Article 4), and the capacity of rights holders to claim their rights: guided at all times by the rights to non-discrimination (Article 2), consideration of the best interests of the child (Article 3 para. 1), life, survival and development (Article 6), and respect for the views of the child (Article 12). Children also have the right to be directed and guided in the exercise of their rights by caregivers, parents and community members, in line with children's evolving capacities (Article 5). This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems.

2.2.4. Patriarchy and 'parentarchy': (women and) children as objects of protection

As has been suggested elsewhere by the present author,⁵² the best interests principle may be seen as no less revolutionary than the principle of non-discrimination and equal treatment of men and women in terms of its relevance to human rights activism in general and the struggle against patriarchy in particular. After all, patriarchy refers not only to women being the possession of men, at worst, and objects of protection at best, but also to children being the possession of adults – fathers in traditional societies, or both parents in more 'enlightened' ('parentarchal') societies – and the objects of protection by their 'owners' or by society against their 'owners' in cases of abuse and neglect.⁵³ A unique provision in this regard is the CRPD's Article 8 on awareness-raising, which extends the state's awareness-raising obligations regarding persons with disabilities to the family level. Given the extreme vulnerability of newborn persons, and their poor legal and social protection, it is to be hoped that Article 8 CRPD may inspire the Committee on the Rights of the Child to adopt a General Comment on awareness-raising in relation to the rights of newborn persons. Several elements of Article 8 CRPD would be relevant for such a General Comment, and could serve as a basis to communicate, as Dwyer⁵⁴ puts it,

the urgency to act immediately after birth to get babies into permanent families,
an urgency that stems from the extreme vulnerability of newborns and from the

⁵² J. C. M. Willems, *A world fit for children: van liefdadigheid naar gedeelde verantwoordelijkheid*, (SWP: Amsterdam, 2003); see for an abstract in English: J. C. M. Willems, 'A world fit for children': *From charity towards shared responsibility*, Inaugural address delivered on the occasion of the appointment to the first Dutch chair of Children's Rights, 7 *Newsletter School of Human Rights Research* 2 (2003), 8, <www.schoolofhumanrights.org/index.php?id=17> (accessed 22 August 2011), Previous issues, Newsletter June 2003.

⁵³ See J. C. M. Willems, 'The CRC and Dutch Parentarchy,' 14 *Newsletter School of Human Rights Research* 1 (2010), 3–4, <www.schoolofhumanrights.org/fileadmin/ext/2010_maart_WEBSITE.pdf> (accessed 26 May 2011).

⁵⁴ J. G. Dwyer, 'First Parents: Reconceptualizing Newborn Adoption,' 37 *Capital University Law Review* 2 (2009), 293–320, at 299, <<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1030&context=facpubs>> (accessed 26 May 2011).

crucial importance for a child's development of forming a secure attachment within the first year of life to a permanent, competent caregiver.

With these words Dwyer brings us back to the subject of basic developmental needs of children, or rather newborn persons, which will conclude the general overview in part one.

2.3. BASIC DEVELOPMENTAL NEEDS

As has been discussed above, the foundations for holistic development, including development of autonomy, are laid in early childhood. Early brain development and development of attachment security form an interconnected process through which these foundations are built. Within a varied but broad genetic potential, brain architecture is determined by parent-infant interaction. This interaction may be of high or low intensity and quality, and may lead to more or less secure attachment bonds. A person's health, resilience and even personality (be it more or less prosocial) constitute the outcome of this developmental process. On the positive end: a person 'fully and effectively' participating in society (and, for example, actively engaged in child rights or disability rights); on the negative end, a person who, upon suffering repeated or chronic abuse or neglect, has become welfare dependent, or a criminal.

2.3.1. Parental sensitivity

In this critical period of life, parental empowerment and parental sensitivity – as both social and parental responsibilities – are crucial factors, which may or may not be affected, in individual cases, by impairments of either the child or the parent. Statistically speaking, certain impairments are seen as risk factors for healthy development. These 'statistics' – and the 'labelling' inherent in identifying risk factors – are not the subject of scrutiny here. In this contribution, the focus will be on the basic needs of all children in relation to parental empowerment and parental sensitivity. Meeting the basic developmental needs of all children is seen as the best starting point for discerning, understanding and addressing their specific needs. Indeed, it may be the only effective starting point. In the literature, this is called the combination of universal prevention (general, reaching out to all parents and children) and selective and/or indicative prevention (addressing specific problems and needs of particular groups or individuals).⁵⁵

⁵⁵ See, e.g., J. Hermanns' description of a (limited or moderate) 'care continuum' – as a combination of universal, selective and indicative prevention – in his book *Het bestrijden van kindermishandeling: een aanpak die werkt*, (Nederlands Jeugdinstituut / Nji, 2008). For information in English on this so-called RAAK method, or RAAK care continuum, as presently being implemented in the Netherlands, see J. Keesom, Factsheet: *The prevention of child abuse: Dutch policies and practice*, (Nederlands Jeugdinstituut (Netherlands Youth Institute), 2010), 2, 14–18, <www.nji.nl/publicaties/Prevention_of_child_abuse.pdf> (accessed 26 May 2011). For information on the RAAK foundation, and the RAAK method or RAAK regions, see <www.raak.org> (accessed 26 May 2011). The present author has been a co-founder and a board member of the RAAK foundation (2000–2008), and a member of the National Steering Committee to supervise, *inter alia*, RAAK implementation (2008–

The Committee on the Rights of the Child⁵⁶ calls on states to

provide for basic and targeted services. They can be initiated and implemented by both state and civil society actors under the responsibility of the state. Such [social] measures include: [...] Identification and prevention of factors and circumstances which hinder vulnerable groups' access to services and full enjoyment of their rights (including indigenous and minority children and children with disabilities amongst others).

2.3.2. Children with disabilities

All children have basic developmental needs. Some children have specific needs. They may be children with disabilities⁵⁷ or they may be children who are 'living in exceptionally difficult conditions,' for instance, because they have parents with disabilities.⁵⁸ Children whose basic developmental needs are not met may end up as children with specific needs. If these specific needs are not met, the children may end up as adults with emotional, social and health problems. Research such as by the ACE (Adverse Childhood Experience) group,⁵⁹ the Dutch Trimbos Institute (Netherlands Institute of Mental Health and Addictions),⁶⁰ and TNO/Quality of Life (Dutch research organization)⁶¹ demonstrates that these problems have long been gravely underestimated, both in scope and in seriousness. They may lead to lifelong impairments and may have transgenerational effects.

2.3.3. Attachment security as a basic need of all children

An especially important basic developmental need of children is attachment security, as is demonstrated by a growing body of research.⁶² Even in high-income states, this basic

2011); see the Steering Committee's final report (*Eindrapport Stuurgroep Aanpak Kindermishandeling*), available at: <<https://zoek.officielebekendmakingen.nl/blg-98920.html>> (accessed 26 May 2011).

⁵⁶ General Comment No. 13, para. 40 (Social measures) sub. (i).

⁵⁷ See Article 23 CRC and Article 7 CRPD. Also see Committee on the Rights of the Child, General Comment No. 9 (2006), The rights of children with disabilities, available at <www2.ohchr.org/english/bodies/crc/comments.htm> (accessed 26 May 2011).

⁵⁸ Preamble CRC, eleventh paragraph.

⁵⁹ See <www.acestudy.org> (accessed 26 May 2011), <www.acestudy.org/aboutus.html> (accessed 26 May 2011) and <www.cdc.gov/ace/index.htm> (accessed 26 May 2011).

⁶⁰ R. de Graaf et al., *De psychische gezondheid van de Nederlandse bevolking; NEMESIS-2: Opzet en eerste resultaten*, (Trimbos-instituut, 2010); *NEMESIS: Netherlands Mental Health Survey and Incidence Study*, <<http://www.trimbos.nl/webwinkel/productoverzicht-webwinkel/feiten---cijfers---beleid/af/af0898-nemesis-2>> (accessed 26 May 2011), <www.trimbos.nl/onderwerpen/feiten-cijfers-en-beleid/psychische-stoornissen/psychische-stoornissen-in-nederland> (accessed 26 May 2011). <www.trimbos.nl/onderwerpen/feiten-cijfers-en-beleid/psychische-stoornissen/psychische-stoornissen-in-nederland/alle-stoornissen-op-een-rij> (accessed 26 May 2011). For information in English, see <www.trimbos.org/news/trimbos-news/new-data-on-mental-health-in-the-netherlands> (accessed 26 May 2011).

⁶¹ R. M. Kuiper et al., *A first hypothetical estimate of the Dutch burden of disease*.

⁶² See National Scientific Council on the Developing Child/National Forum on Early Childhood Policy and Programs, *The Foundations of Lifelong Health are Built in Early Childhood*, (Center on the Developing Child, Harvard University, 2010), (<www.developingchild.net> (accessed 26 May 2011)), <http://developingchild.harvard.edu/index.php/library/reports_and_working_papers/foundations-of-lifelong

developmental need is not met on a large scale. As we have seen above, more than one third of infants are not securely attached. Attachment security depends on parental empowerment and parental sensitivity. Since parents are not licensed,⁶³ parental empowerment and parental sensitivity depend on prenatal screening of extreme risks and prenatal information, education, support and child protection. However, also in high-income states, including those in the EU, postnatal youth care and child protection is still the rule, rather than prenatal screening and empowerment. A ‘parental rights’ tradition – according to which ‘[p]arents have the natural right to have children and to raise children as they see fit’⁶⁴ – still frustrates the effective implementation of CRC and CRPD principles and promises.

No age group is more vulnerable than infants aged between minus nine months and one to two or three years. At the same time, no age group is less protected by the law. Newborn persons are almost completely at the mercy of their parents or carers, whose competence is not questioned until serious harm, or at least the threat of serious harm, is reported to authorities. Basic human rights to freedom from inhuman treatment and protection of personal integrity seem to disappear behind more or less absolute views of parental autonomy (autonomy, that is, in the legal sense). Admittedly, several high-income states have policies relating to, *inter alia*, awareness-raising, professionalization of workers, abolition of parental rights to use corporal punishment⁶⁵ (as a basis for parent education on non-violent discipline and positive parenting), and related initiatives by non-governmental organizations (such as, for instance, No Kidding in the Netherlands). However, the scope of states’ and societies’ failure to meet basic and specific needs of young children is so large as to be indicative of a systemic violation of their rights. Structural changes therefore have to be made. Parental ‘responsibilization’ – creating transparency and clarity in law and policy about child rights

health> (accessed 26 May 2011). Also see J. C. M. Willems, ‘5. Safety and Development – Addiction, Secure Attachment, Brain Development, Early Childhood,’ in: J. C. M. Willems (ed.), *Children’s Rights and Human Development*, 407–519.

⁶³ For proposals on parent licensing, see: J. C. Westman, *Licensing Parents*; D. T. Lykken, ‘Incompetent parenting: its causes and cures,’ *27 Child Psychiatry and Human Development* 3 (1997), 129–137, (<www.springerlink.com/content/r29g74587516t0v1/fulltext.pdf> (accessed 26 May 2011)); D. T. Lykken, ‘The causes and costs of crime and a controversial cure’; and ‘Licensing parents: a response to critics,’ *68 Journal of Personality* 3 (2000), 559–605, and 640–649 (<<http://onlinelibrary.wiley.com/doi/10.1111/1467-6494.00107/pdf>> and <<http://onlinelibrary.wiley.com/doi/10.1111/1467-6494.00111/pdf>>; P. Tittle (ed.), *Should Parents be Licensed? Debating the Issues*, (Prometheus Books, 2004); M. C. Vopat, ‘Parent Licensing and the Protection of Children,’ in: S. Brennan and R. Noggle (eds.), *Taking Responsibility for Children*, (Wilfrid Laurier University Press, 2007), 73–96; M. T. McFall, *Licensing Parents; Family, State, and Child Maltreatment*, (Lexington Books, 2009); H. LaFollette, *27 Journal of Applied Philosophy* 4 (2010), 327–343.

⁶⁴ K. Covell and R. B. Howe, *Children, Families and Violence: Challenges for Children’s Rights*, (Jessica Kingsley Publishers, 2009), 194. According to Dwyer, parental child-rearing rights are a conceptual error: see J. G. Dwyer, ‘Parental entitlement and corporal punishment,’ *73 Law and Contemporary Problems* 2 (2010), 189–210 at 206–209, <[www.law.duke.edu/shell/cite.pl?73+Law+&+Contemp.+Probs.+189+\(spring+2010\)+pdf](http://www.law.duke.edu/shell/cite.pl?73+Law+&+Contemp.+Probs.+189+(spring+2010)+pdf)> (accessed 26 May 2011).

⁶⁵ On social science aspects of corporal punishment, see M. A. Straus, ‘Prevalence, societal causes, and trends in corporal punishment by parents in world perspective,’ *73 Law and Contemporary Problems* 2 (2010), 1–30; E. T. Gershoff, ‘More harm than good: a summary of scientific research on the intended and unintended effects of corporal punishment on children,’ *73 Law and Contemporary Problems* 2 (2010), 31–56. On legal theory aspects, see J. G. Dwyer, *73 Law and Contemporary Problems* 2 (2010), 189–210. On international law aspects, see M. D. A. Freeman, *73 Law and Contemporary Problems* 2(2010), 211–251. All articles available at: <www.law.duke.edu/journals/lcp> (accessed 26 May 2011).

based parental responsibilities – should form part, indeed the basis of, parental empowerment leading to parental sensitivity. The second part of this contribution proposes the introduction of a legal minimum competent parenthood or minimum parenting standard: the law should not leave babies to parents who do not meet a minimum standard of competence, making infants completely dependent on the reporting of extreme risks to youth care or child protection agencies by bystanders and professionals.

2.3.4. Specific needs

Although specific needs may not always be adequately met, and this is true even in high-income states to a serious degree, structural problems still exist in relation to basic developmental needs. This also negatively affects addressing specific needs. Specific needs should be met on the basis of the provision of education and support for basic developmental needs. Children with disabilities share certain basic developmental needs with all children: attachment security, sensitive parenting, protection against abuse and neglect, health care, education, participation (responsibilities and tasks in family, school and community), play, inclusion, good adult examples in family, community and society, and so on. Children may have specific needs because they have certain disabilities which can present serious difficulties for their parents. But more often, children's main 'disability' is their parents' lack of empowerment. These children, too, have specific needs, such as education and support for their parents which may make their parents more sensitive caregivers. In some cases, their specific needs can only be met by arranging extra or special parenting through foster care or adoption.

3. PART 2: MEETING BASIC DEVELOPMENTAL NEEDS – STRUCTURAL PREVENTION THROUGH 'SMECC'

Part two consists of three sections. The first section – a short analysis or a rough periodization – presents three stages of development of children's rights: a pre-conventional (patriarchal), a conventional (post-patriarchal but still largely parentiarthal), and a post-conventional (and post-parentiarthal) stage. The second section discusses transgenerational discrimination (or 'transism') as one of several forms of discrimination, with a special focus on parents with mental illness problems and on their children. Transism will remain pervasive and dominant unless the child rights agenda is moved forward towards a post-parentiarthal stage, for which integrated and robust policies are needed. The third section introduces a 'SMECC' 'big five' of child and family laws and policies, the main aim of which is to eliminate transism, therefore contributing to the elimination of disability discrimination as well as other forms of exclusion and deprivation.

3.1. THREE STAGES IN THE DEVELOPMENT OF CHILDREN'S RIGHTS

Three historical stages may be discerned in the development of children's rights. A distinction can be made between the periods before and after the adoption of the Convention on the Rights of the Child (CRC) by the General Assembly of the United Nations (UN) in 1989 or its entry into force in a particular state: the pre-conventional period and the conventional period. A third period appears on the horizon: the post-conventional period. These three periods relate to the moral, legal, social and political status of children globally and in the country in which they live. But they also relate to models of the family and family policy. Covell and Howe, referring to Eichler, mention three such models of family and family policy in Western countries in historical sequence: the patriarchal model, the individual responsibility model, and the social responsibility model.⁶⁶ The first one is pre-conventional; the second and third models resemble, respectively, libertarian (individualistic) and dignitarian (both individualist and collective) views or traditions in human rights law.⁶⁷ The latter view is to be preferred: both individual liberty and collective humanity should be seen as dimensions of human dignity.⁶⁸ Covell and Howe also refer to three views on the status of children: children as the property of their parents, children as 'not-yets,' and children as persons with inherent rights.⁶⁹ The first view – children as the property of parents – still applies to a large degree to infants and young children, as has been discussed above. However, it should be seen as pre-conventional, since the CRC's view of the child as a subject of rights applies to all children. The second view – 'children as a special and vulnerable class of not-yets in need of paternalistic state protection'⁷⁰ – apparently refers mainly to older children, since paternalism is a term best suited to the denial of participation rights to children of sufficient age and maturity to exercise them. This, too, is a pre-conventional view. The third view – children as persons with inherent rights – is obviously the conventional one. A fourth view is added by Dwyer: children as morally superior.⁷¹ This latter view may be seen as belonging to the post-conventional period, which will be discussed below.

On a global level, 1989, the year of the adoption of the CRC by the General Assembly of the UN, may be said to mark the transition from the pre-conventional to the conventional period. On a national and formal level, the year of the entry into force of the CRC for the state party concerned, may be said to mark the transition (in the Netherlands, this was the case in 1995). On a substantive level, major national developments may mark the transition from the pre-

⁶⁶ K. Covell and R. B. Howe, *Children, Families and Violence*, 192–194.

⁶⁷ See J. C. M. Willems, 'Children's rights at a dignitarian horizon of responsible parenthood,' in: *Developmental and Autonomy Rights of Children*, 187–210, at 192–196; updated online version (March 2008): <<http://arno.unimaas.nl/show.cgi?did=12959>> (accessed 26 May 2011), <<http://arno.unimaas.nl/show.cgi?fid=9763>> (accessed 26 May 2011).

⁶⁸ See B. van Beers, 'Menselijke maakbaarheid, menselijke waardigheid en de mensenrechten,' 35 *Nederlands Tijdschrift voor de Mensenrechten (NTM/NJCM Bulletin)* 8 (2010), 997–1016, <www.njcm.nl> (accessed 26 May 2011).

⁶⁹ K. Covell and B. Howe, *Children, Families and Violence*, 194–196.

⁷⁰ *Children, Families and Violence*, 194.

⁷¹ J. G. Dwyer, *Moral Status and Human Life: The Case for Children's Superiority*, (Cambridge University Press, 2011).

conventional to the conventional, and from the conventional to the post-conventional period. In 2007, the Netherlands enacted legislation to prohibit corporal punishment and humiliation of children by their parents. This legislative landmark ended the pre-conventional period in this country. In the same year, policies were adopted which, as will be illustrated below, offer the first glimpses of the post-conventional period.

3.1.1. Pre-conventional period: inferior moral status of the child

In the pre-conventional (more or less patriarchal) period, children's rights emerge when laws are enacted to oblige parents to send their child to school and to prohibit parents from sending their child to do exploitative work. In this period, which started towards the beginning of the 20th century in high-income states, child protection laws also limit absolute parental – or rather, paternal – power in cases of child abuse and neglect. However, children are still seen as their fathers' or parents' property rather than as subjects of rights. In predominantly patriarchal systems, they share an inferior moral, legal and social status with women. In parentiarthal systems, men and women have more or less equal status, but children are still seen and treated as of inferior moral status.

3.1.2. Conventional period: equal moral status, towards equal protection by the law

In the conventional (post-patriarchal but still largely parentiarthal) period, parental power is further restricted by legislation prohibiting all forms of corporal punishment and humiliation of children, conjoined with the empowerment of parents through the provision of information and education on non-violent discipline. This was the case in Sweden in 1979, the very same year that the UN started negotiations on the CRC. On a regional, pan-European level, 'conventionalism' – encouraging states to step out of pre-conventional doctrines or traditions by embracing CRC principles and evolving standards – was promoted by the Council of Europe when, in 2006, its Committee of Ministers adopted a recommendation on policy to support positive parenting. In the appendix to this recommendation, positive parenting is defined as referring to 'parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child.' The Committee of Ministers:⁷²

- Recommends that the governments of member states:
- acknowledge the essential nature of families and of the parental role and create the necessary conditions for positive parenting in the best interests of the child;
 - take all appropriate legislative, administrative, financial and other measures adhering to the principles set out in the appendix to this recommendation.

⁷² Recommendation (2006) 19 of the Committee of Ministers to [Council of Europe] member states on policy to support positive parenting, <<https://wcd.coe.int/ViewDoc.jsp?id=1073507&Site=CM>> (accessed 26 May 2011).

In its General Comment No. 13 (2011), the Committee on the Rights of the Child refers to ‘positive child rearing’ – without, however, providing a definition of this concept:⁷³

In particular, the Committee maintains that the best interests of the child are best served through:

- prevention of all forms of violence and the promotion of positive child rearing, emphasizing the need for a focus on primary prevention in national co-ordinating frameworks;
- adequate investment in human, financial and technical resources dedicated to the implementation of a child rights-based and integrated child protection and support system.

Under the heading of legislative measures, the Committee states:⁷⁴

States parties that have not yet done so, have to: [...] establish and implement social programmes to promote optimal positive child rearing by providing necessary support for the child and for those who have the care of the child through integrated services.

Furthermore, in the conventional period, professional codes are introduced in which the safety of the child is prioritized over parental (property or privacy) rights, such as mandatory reporting or the mandatory use of reporting codes and protocols in case of suspicion of child abuse and neglect (in the Netherlands, the latter is expected to be the case as of 2013).⁷⁵ In this period, policies may also be introduced to end impunity⁷⁶ of perpetrators of more serious forms of child maltreatment, because it is felt that existing criminal law protection should be extended not only to women against violent husbands but also to children against abusive parents. Both patriarchal and parential privileges are no longer seen as acceptable. Promoting and providing equal protection of children by the law may be seen as a sign of the child’s equal moral status.

According to the Committee on the Rights of the Child, ‘[i]n every country reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals

⁷³ General Comment No. 13, para. 54 (Article 3 [CRC]: Best interests of the child).

⁷⁴ General Comment No. 13, para. 38 (Legislative measures). Also see para. 40 (Social measures) sub. (ii): support the child’s family to provide optimal positive child rearing; and para. 41 (Educational measures) sub. (i): awareness campaigns to promote positive child rearing, and sub. (iii): education on positive child rearing for parents and caregivers.

⁷⁵ In a Letter to Parliament of 2 February 2011 (Second Chamber 2010–2011, 28345 No. 111, p. 4), it was announced that a bill on the mandatory use of a reporting code for 1.5 million professionals in the Netherlands will be put before parliament before the summer of 2011. Also see J. Keesom, *The prevention of child abuse*, 13.

⁷⁶ Of an estimated 100,000 yearly cases of serious abuse and neglect in the Netherlands, only 800 cases are reported to the public prosecutor, and only some thirty percent of these lead to the conviction of the perpetrator (*Trouw*, 13 April 2011). See R.T. van Vianen et al., *De inzet van het strafrecht bij kindermishandeling*, (Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC), Ministerie van Veiligheid en Justitie, Adviesbureau Van Montfoort, 2010), 8–12.

working directly with children.’⁷⁷ The Committee calls for an ‘absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators.’⁷⁸ However, as the Committee says elsewhere,⁷⁹

in cases of violence where perpetrators are primary caregivers [...], depending on the severity and other factors, intervention measures focusing on social and educational treatment and a restorative approach are often preferable to a purely punitive judicial involvement.

Importantly, in relation to child perpetrators, the Committee notes:⁸⁰

Children who are aggressive towards other children have often been deprived of a caring family and community environment. They must be regarded as victims of their child-rearing conditions, which imbue them with frustration, hatred and aggression. Educational measures must have priority and be directed to improve their pro-social attitudes, competencies and behaviours.

The equal moral status of children in the conventional period is expressed by the Committee on the Rights of the Child in a visionary paragraph on societal development and children’s contribution:⁸¹

A respectful, supportive child-rearing environment free from violence supports the realisation of children’s individual personalities and fosters the development of social, responsible and actively contributing citizens in the local community and larger society. Research shows that children who have not experienced violence and who develop in a healthy manner are less likely to act violently, both in childhood and when they become adults. Preventing violence in one generation reduces its likelihood in the next. Implementation of Article 19 [CRC] is therefore a key strategy for reducing and preventing all forms of violence in societies and for promoting ‘social progress and better standards of life’ and ‘freedom, justice and peace in the world’ for the ‘human family’ in which children have a place and a value equal to that of adults (Convention preamble).

3.1.3. Post-conventional period: superior moral status, towards effective protection by the law

In the post-conventional and post-parentiarchal periods, proactive legislation to promote and protect children’s rights is introduced. This legislation enhances the social and political

⁷⁷ General Comment No. 13, para. 45 (Reporting).

⁷⁸ General Comment No. 13, para. 38 (Legislative measures).

⁷⁹ General Comment No. 13, para. 50 (Judicial involvement).

⁸⁰ General Comment No. 13, para. 48 (Treatment).

⁸¹ General Comment No. 13, para. 13 (Societal development and children’s contribution).

participation of children and contributes to eliminating all forms of transgenerational discrimination, or transism (as will be discussed below), and more specifically of child maltreatment by parents. This would mean that the concept of children's rights has definitively replaced older concepts or traditions of children being the property of their (biological) parents. An example of this would be legislation which prohibits parents from violating their male child's personal, especially physical and sexual, integrity through circumcision practices.⁸² Another example would be extending the right to vote to minors of a certain age.⁸³ A more far-reaching example would be the adoption of a minimum legal standard for parental competency, which may be seen as a major contribution to the effective protection of young children by the law (to be discussed below). In the Netherlands, post-conventional legislation may be discerned in the introduction of a care continuum,⁸⁴ which starts with proactive forms of prevention, such as parent education on non-violent discipline (the prohibition of corporal punishment) and Abusive Head Trauma ('Shaken Baby Syndrome'), and the screening of pregnant women for extreme risks of child maltreatment.⁸⁵

In his latest book, *Moral Status and Human Life: The Case for Children's Superiority* (2011), Dwyer makes a persuasive case for children's moral superiority.⁸⁶ It may be submitted here that international law opened the path for recognizing children's moral superiority – and thus for their more effective protection by the law – by prioritizing the best interests of the child in Article 3 CRC. The international legal roots for children's moral superiority may be traced back even further. The 1924 Geneva (League of Nations) Declaration of the Rights of the Child already recognized 'that mankind owes to the child the best that it has to give.' This was repeated in the 1959 UN Declaration of the Rights of the Child, which also recognized (maybe for the first time in an international document⁸⁷) not only the dignity of the child, but also the paramountcy of the child's best interests:⁸⁸

Declaration of the Rights of the Child – *Principle 2*: The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other

⁸² See J. Smith, 'Male circumcision and the rights of the child,' in: M. Bulterman et al. (eds.), *To Baehr in Our Minds: Essays on Human Rights from the Heart of the Netherlands* (SIM Special No. 21), (Netherlands Institute of Human Rights (SIM), University of Utrecht, 1998), 475–499, <www.cirp.org/library/legal/smith> (accessed 26 May 2011). Article 24 para. 3 CRC is understood as implying an obligation for states to prohibit female circumcision (FGM/Cutting) but not (yet) male circumcision.

⁸³ See 'Issue topic: Children's and Young People's Rights – with a Focus on the Right to Vote,' 9 *Intergenerational Justice Review* 4 (2009), 127–158, <www.crin.org/docs/IGJR_4_2009.pdf> (accessed 26 May 2011).

⁸⁴ See J. Keesom, *The prevention of child abuse*, 16.

⁸⁵ See R. Schouten & K. Kooijman, *Eindrapportage Startfoto Regionale Aanpak Kindermishandeling*, (Nederlands Jeugdinstituut (NJI), 2010), 9–11 (points 1–3), <www.nji.nl/nji/projectenDownloads/RAK/EindrapportageStartfotoRegionaleAanpakKindermishandeling.pdf> (accessed 26 May 2011).

⁸⁶ J. G. Dwyer, *Moral Status and Human Life*.

⁸⁷ See M. D. A. Freeman, 73 *Law and Contemporary Problems* 2 (2010), 211–251, at 214.

⁸⁸ The texts of the 1924 and 1959 Declarations are reproduced in J. C. M. Willems, 'The Convention on the Rights of the Child: Orientation and Conceptualization of Children's Rights (Trias Pedagogica versus Transism),' in: J. C. M. Willems, *Developmental and Autonomy Rights of Children: Empowering Children, Caregivers and Communities*, 143–186, at 184–186.

means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

As a matter of fact, the Declaration's wording ('the paramount consideration') is even stronger than the binding language of CRC's Article 3 ('a primary consideration').

3.2. TRANSGENERATIONAL AND DISABILITY DISCRIMINATION

The Convention on the Rights of Persons with Disabilities may be seen as an instrument not only of respect for equal dignity and rights, but also of hope for raising the quality of life for all children. Since its adoption by the General Assembly of the UN in 2006, the house of human rights firmly rests on four inclusive cornerstones: four international (UN) tools – ICERD (the International Convention on the Elimination of all forms of Racial Discrimination, 1965); CEDAW (the Convention on the Elimination of all forms of Discrimination Against Women, 1979); CRC (the Convention on the Rights of the Child, 1989); and CRPD (the Convention on the Rights of Persons with Disabilities, 2006)⁸⁹ – to fight against marginalization and exclusion, i.e., systemic discrimination, on the basis of race (or ethnicity), sex (or gender), age (that is, infancy and early childhood, as has been expounded above and will be further dealt with below), and disability.

3.2.1. Parents with mental illness or addiction problems

States, including high-income states and including those in the EU, still have a long way to go, however, if they want to benefit from the inclusion of all its citizens and inhabitants, including persons with disabilities and the very young. According to Article 1 CRPD, persons with disabilities include those who have long-term mental impairments.⁹⁰ More than one in three children in the Netherlands grow up with parents who may fall within this category because of their mental illness or addiction problems.⁹¹ Many children of parents with mental illness or addiction problems develop mental disorders themselves (two thirds of them if both

⁸⁹ For texts and other documentation and information, see <www.ohchr.org> (accessed 26 May 2011).

⁹⁰ On defining disability (on the basis of the social model of disability as endorsed by the preamble of the CRPD sub. (e), quoted above), see Office of the High Commissioner for Human Rights, *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors*, (United Nations, 2010), 15–16, <www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf> (accessed 26 May 2011).

⁹¹ In the Netherlands, 30 to 40 per cent of children are raised by parents with mental disorders and/or addictions (1.6 million children, adolescents and young adults below 22 years of age, which amounts to approximately 37% of minors, the total number of minors in the Netherlands being 3.5 million). See Trimbos Institute (<www.trimbos.org> (accessed 26 May 2011)), <www.trimbospreventie.nl> (accessed 26 May 2011), KOPP/KVO (COPMI/COAP: children of parents with mental illness or addiction problems), <www.trimbos.nl/onderwerpen/preventie/kopp-kvo> (accessed 26 May 2011). For information in English, see <www.trimbos.org/news/trimbos-news/new-data-on-mental-health-in-the-netherlands> (accessed 26 May 2011), Netherlands Mental Health Survey and Incidence Study-2 (NEMESIS-2).

parents have a mental disorder).⁹² Some of these parents may be struggling with unresolved insecure attachment or childhood trauma issues. There is a lot we can and must do to empower and assist these parents and prevent developmental damage of their children and the transgenerational transmission of deprivation, trauma and poor mental and physical health.⁹³ A huge gap exists between what we know and what we do to inform and support families and empower parents and children.⁹⁴ It may be superfluous to say that the equal dignity and rights paradigm – in CRPD terms, the ‘equal basis’ proviso in Article 7 on ‘Children with disabilities’ and throughout the entire CRPD – will be of much greater significance if empowerment levels are raised for all children and parents, and systemic discrimination is addressed. This could easily be done, in financial, professional, and organizational terms, but is not done in high-income states: we still rather spend billions on youth care after developmental damage has occurred.⁹⁵

3.2.2. Transism

Let us have a brief look at the present situation in the world, including the EU – the situation which the UN human rights treaties, more specifically the Women’s Convention, the Children’s Convention, and the CRPD, try to challenge and to change. The (1979) Women’s Convention, or CEDAW (Convention on the Elimination of all forms of Discrimination Against Women), deals with one of the two traditionally or originally patriarchal forms of discrimination: discrimination against women – also called sexism, or misogyny (hatred or fear of women). The (1989) Convention on the Rights of the Child deals with, or at least

⁹² See M. Bool et al., *Trimbos Factsheet: Children of Parents with Psychological Problems (CPPP)*, (Trimbos institute, 2007), <www.trimbos.nl> (accessed 26 May 2011) (<www.trimbos.nl/webwinkel/~media/files/gratis_downloads/af0427_lsp_factsheet_children_of_parents.ashx> (accessed 26 May 2011)).

⁹³ As the ACE Study in the US revealed, ‘Childhood abuse, neglect, and exposure to other traumatic stressors [household dysfunctions] which we term Adverse Childhood Experiences (ACE) are common. Almost two-thirds of our study participants reported at least one ACE, and more than one in five reported three or more ACE. The short- and long-term outcomes of these childhood exposures include a multitude of health and social problems.’ See <www.cdc.gov/nccdphp/ace/findings.htm> (accessed 26 May 2011). For the Netherlands, see R. M. Kuiper et al., *A first hypothetical estimate of the Dutch burden of disease*. Table 3 of the Dutch study (Factsheet; Report, p. 9, Table 3b) shows a comparison of US and Dutch ACE scores: in the Netherlands, more than two in five respondents report an ACE score of one or more (44%); in the US, almost two in three (64%). An ACE score of four or more (that is, having been exposed to four or more types of abuse and household dysfunctions) is reported by 11% of Dutch and 13% of US respondents. Interestingly, in Metro Manila, ‘only’ 9% (of 1,068 respondents) report an ACE score of four or more (but 75% report an ACE score of at least one): see L. S. Ramiro et al., ‘Adverse childhood experiences (ACE) and health-risk behaviours among adults in a developing country setting,’ 34 *Child Abuse & Neglect* 11 (2010), 842–855, at 845–846.

⁹⁴ See National Scientific Council on the Developing Child, *The science of early childhood development: Closing the gap between what we know and what we do*, (Center on the Developing Child, Harvard University, 2007), (<www.developingchild.net> (accessed 26 May 2011)), <http://developingchild.harvard.edu/library/reports_and_working_papers/science_of_early_childhood_development/> (accessed 26 May 2011). Also see: National Scientific Council on the Developing Child/National Forum on Early Childhood Policy and Programs, *The Foundations of Lifelong Health are Built in Early Childhood*; and: J. P. Shonkoff and S. Nall Bales, ‘Science does not speak for itself: Translating child development research for the public and its policymakers,’ 82 *Child Development* 1 (2011), 17–32, <<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8624.2010.01538.x/pdf>> (accessed 28 September 2011).

⁹⁵ See, e.g., B. D. Perry & M. Szalavitz, *The boy who was raised as a dog*, 231 seq.; J. C. M. Willems (ed.), *Children’s Rights and Human Development*, *passim*.

challenges, the second form of traditionally patriarchal discrimination, a form little known or recognized in human rights literature and practice, in spite of – and maybe also because of – its pervasiveness and dominance. Some authors refer to it as ‘juvenile ageism,’ a term introduced by Jack Westman in 1991.⁹⁶ According to Westman:⁹⁷

Ageism is a form of prejudice and discrimination as virulent as racism and as pervasive as sexism. It has been described as it affects the elderly but has not been sufficiently recognized as it affects the young. Institutional juvenile ageism exists when social systems ignore the interests of children. Individual juvenile ageism exists when the developmental interests of a child are not respected.

Over the past ten years, the present author has referred to patriarchal discrimination against young children either as ‘parentarchy’⁹⁸ or as ‘transgenerational discrimination,’ abbreviated to ‘transism.’⁹⁹ (A term the author introduced recently is ‘baby discrimination’ in an attempt to translate Westman’s ‘juvenile ageism’ into ‘pronounceable’ Dutch.¹⁰⁰) Parentarchy refers to the legal and moral position of children, especially babies and the very young, as personal parental property, rather than as individuals, citizens and subjects of human rights. At the same time, it refers to the enlightened progress from traditional patriarchy to women’s rights – from paternal (or fatherly) to parental power. Although gradually, over the past decades, older children (youths, adolescents, young persons) were included, babies and young children still are not. They are still more or less the personal property of biological and legal parents rather than persons, newborn persons, entitled to competent parents and positive (responsive or sensitive) parenting. As has already been pointed out, this comes at an enormous cost to children, families and society, both in human and in economic terms. We all pay the price – which runs into the billions of euro a year in the EU (over US\$100 billion in conservative

⁹⁶ See J. C. Westman, ‘Juvenile Ageism: Unrecognized Prejudice and Discrimination Against the Young,’ 21 *Child Psychiatry and Human Development* 4 (1991), 237–256,

<www.springerlink.com/content/p661483166023743/fulltext.pdf> (accessed 26 May 2011). Also see J. C. Westman, *Licensing Parents*, 123–148; J. C. Westman, *Breaking the Adolescent Parent Cycle*, 17–18.

⁹⁷ 21 *Child Psychiatry and Human Development* 4 (1991), 237–256, at 237 (Abstract).

⁹⁸ The term ‘parentarchy’ (in Dutch, ‘parentarchie’ or ‘parentarchaat’) was introduced by the present author in 1992 in an article in the Dutch feminist law journal *Nemesis*, available at <www.iiav.nl/ezines/DivTs/Nemesis/1992/nemesis_1992_vadertje.pdf> (accessed 26 May 2011). Also see J. C. M. Willems, 14 *Newsletter School of Human Rights Research* 1 (2010), 3–4.

⁹⁹ The term ‘transgenerational discrimination’ was introduced in 1998 (J. C. M. Willems, *Wie zal de Opvoeders Opvoeden? Kindermishandeling en het Recht van het Kind op Persoonswording* [Who will Educate the Educators? Child Abuse and the Right of the Child to Become a Person] (with a summary in English, 1001–1008), Ph.D. Maastricht University 1998, (T.M.C. Asser Press, 1999), 752, 785;

<<http://arno.unimaas.nl/show.cgi?fid=8548>> (accessed 26 May 2011)); the abbreviation ‘transism’ was introduced in 2000 in book publications of conferences in Nimwegen (the Netherlands) and Ghent (Belgium), respectively: see J. C. M. Willems, ‘Kindervolkenrecht en Trias pedagogica,’ in: J. R. M. Gerris (ed.), *Preventie van binnenuit*, (Van Gorcum, 2000), 15–30, at 17 (16th Family research symposium, Nijmegen University, 25–26 November 1999); and J. C. M. Willems, ‘Het belang van het kind, de rechten van het kind, hechting en verwerking: Vier katalysatoren in de humanitaire ontwikkeling naar preventieve opvoedingsfacilitering en uitbanning van transisme,’ in: M. Bouverne-De Bie & R. Roose (eds.), *Opvoedingsondersteuning en jeugdzorg*, (Academia Press, 2000), 5–41, at 7–8 (Ghent University, 12 January 2000).

¹⁰⁰ J. C. M. Willems, ‘Baby heeft recht op competente opvoeders’ [A newborn baby has a right to competent parents], Podium, *Trouw*, 17 July 2010, 22 (introduction of term ‘baby discrimination’), <www.trouw.nl> (accessed 26 May 2011).

estimates; conservative because it is impossible to assess all indirect costs).¹⁰¹ The more we understand pre- and postnatal brain development and the importance of healthy pregnancies and infant-parent attachment security, the more we realize how preventable these costs are. This may justify the fact that parentarchy sounds hardly more enlightened than patriarchy – at least from a child rights perspective. However it may justify even more the use of the term transgenerational discrimination, abbreviated to transism, to reveal to us that not only babies are affected in this area. The entire family unit, as well as society itself, are affected, as impaired brain development, childhood trauma and attachment insecurity are transmitted from generation to generation. This will continue as long as cycles of abuse and neglect are not adequately addressed, prevented, stopped and ‘repaired.’

It is submitted that we cannot successfully fight one form of discrimination without fighting the other ones. As the UN doctrine states: ‘all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing.’¹⁰² Disability discrimination is inextricably interwoven with transism and other forms of systemic discrimination which victimize or stigmatize parents and children, especially the very young.

3.3. INTRODUCING SMECC: A BIG FIVE OF CHILD AND FAMILY LAWS AND POLICIES

In its 2011 General Comment,¹⁰³ the Committee on the Rights of the Child proposes

a ‘co-ordinating framework on violence against children’ for all child rights-based measures to protect children from violence in all its forms and to support a protective environment.

However, the Committee adds that there is ‘no single model for such co-ordinating frameworks.’¹⁰⁴ In the following paragraphs, a broad and comprehensive approach is proposed towards meeting the basic developmental needs of young children in EU high-income states. The Committee on the Rights of the Child also starts from the assumption of a broad approach of what it calls primary, or proactive prevention: General Comment No. 13 is based, *inter alia*, on the fundamental assumption that ‘[p]rimary prevention, through public

¹⁰¹ C.-T. Wang and John Holton, *Total Estimated Cost of Child Abuse and Neglect*, 4–5, (\$33 billion direct and \$70 billion indirect costs each year). Also see K. T. Alvy / NEPI (National Effective Parenting Initiative), *An Effective Parenting Initiative – To Make the United States of America a Model Child and Family-Friendly Nation*, (Center for the Improvement of Child Caring (CICC), 2009), 5, <www.ciccparenting.org/pdf/NPI.pdf> (accessed 26 May 2011): ‘Direct costs (judicial, law enforcement and health system responses to child maltreatment) are estimated at \$24 billion each year. The indirect costs (long-term economic consequences of child maltreatment) exceed an estimated \$69 billion annually.’

¹⁰² General Assembly Resolution 60/251: Human Rights Council (2006), preamble.

¹⁰³ General Comment No. 13, para. 61 (Beyond National Plans of Action).

¹⁰⁴ *Ibid.*, para. 64 (The process of developing a national co-ordinating framework).

health, education, social services and other approaches, of all forms of violence is of paramount importance.¹⁰⁵ Elsewhere in the Comment it is further stated:¹⁰⁶

The Committee emphasises in the strongest terms that child protection must begin with proactive prevention of all forms of violence as well as explicitly prohibiting all forms of violence. States have the obligation to adopt all measures necessary to ensure that adults responsible for the care, guidance and upbringing of children will respect and protect children's rights. Prevention includes public health and other measures to positively promote respectful child rearing, free from violence, for all children, and to target the root causes of violence at the levels of the child, family, perpetrator, community, institution and society. Emphasis on general (primary) and targeted (secondary) prevention must remain paramount at all times in the development and implementation of child protection systems. Preventive measures offer the greatest return in the long-term. However, commitment to prevention does not lessen States' obligations to respond effectively to violence when it occurs.

The structural preventative approach presented here, for the first time in academic literature,¹⁰⁷ attempts not only to give more concrete content to these words of the Committee, but also to project them from their post-patriarchal, conventional present – although still awaiting full implementation, including in the EU – into a more fully emancipated post-conventional, and ultimately post-parentiarchal, future. What follows, then, is a synthesis of the literature on international and national developments (as referred to and quoted in this contribution) in relation to the structural prevention of child maltreatment. Another term for this comprehensive approach, therefore, is structural prevention of child maltreatment. In the context of structural prevention, child maltreatment – as was stated in the introduction – is used as a broad concept encompassing all forms of developmental damage, or harm, of children,¹⁰⁸ especially in infancy and early childhood, which could in principle have been prevented if parents had been better screened, informed and supported.¹⁰⁹ Structural

¹⁰⁵ General Comment No. 13, para. 2 (Overview).

¹⁰⁶ Ibid., para. 43 (Prevention).

¹⁰⁷ The present author proposed the SMECC approach in a lecture for No Kidding (<www.no-kidding.nu> (accessed 26 May 2011)) in Amsterdam on 13 November 2010 (J. C. M. Willems, *It takes a SMECC to raise a child*, presentation Structural Child Abuse Prevention Plan, Profit for the World's Children/No Kidding, Network Event, (2010).

¹⁰⁸ This is in line with the definition of violence in the Committee on the Rights of the Child's General Comment No. 13 (para. 3). For an extensive, non-exhaustive list of forms of violence, see para. 18–30 (Legal analysis of Article 19 [CRC]: 'all forms of ...').

¹⁰⁹ For definitions and an elaborate classification of diverse forms of child maltreatment, see D. Barnett et al., 'Defining child maltreatment: the interface between policy and research,' in: D. Cicchetti and S. L. Toth (eds.), *Child Abuse, Child Development, and Social Policy*, (Ablex Publishing Corporation, 1993), 7–73; adopted and adapted by D. J. English and the LONGSCAN Investigators, *Modified Maltreatment Classification System (MMCS)*, (1997) online: Injury Prevention Research Center (IPRC), University of North Carolina, Longitudinal Studies of Child Abuse and Neglect (LONGSCAN): <www.iprc.unc.edu/longscan> (accessed 26 May 2011), Measurement/Maltreatment Coding, MMCS Modified Maltreatment Classification System, PDF (direct: <www.iprc.unc.edu/longscan/pages/maltx/mmcs/LONGSCAN_MMCS_Coding.pdf> (accessed 26 May 2011)). For a Dutch translation of the original classification by Barnett et al., see J. C. M. Willems, *Wie zal de*

prevention is not to be confused with primary prevention or universal prevention, terms well known in the child abuse prevention literature.¹¹⁰ Nor should structural prevention be confused with recent proposals relating to effective (or true) prevention,¹¹¹ or prevention through positive parenting (Council of Europe)¹¹² or effective parenting (in the USA).¹¹³

3.3.1. SMECC

For the proposed system of structural prevention, the acronym SMECC is introduced. SMECC refers to an integrated ‘big five’ of child-rights-based child and family laws and policies:

1. School child rights and parenthood education;
2. A legal Minimum standard for competent parenthood;
3. Child rights and parenting Education for parents-to-be;
4. Child- and family-friendly social and economic policies; and
5. A high-quality Continuum of care for children and families.

The ‘big five’ policies, partly overlapping and mutually reinforcing, are briefly described below. It should be added that the emphasis is on the period from (pre)conception to kindergarten or school age. Its law- and policy-making agenda starts earlier than, for instance, David Kirp’s ‘kids-first policy agenda’ – guided by the ‘Golden Rule: *Every child deserves what’s good enough for a child you love*’¹¹⁴ – of ‘five big cradle-to-college initiatives,’¹¹⁵ which, moreover, explicitly extends to adolescents. Of the ‘SMECC’ big five laws and policies presented here, the ‘minimum standard’ proposal is probably the only one with which

Opvoeders Opvoeden? 1038–1062, Appendix 3, available at <www.stopkindermishandeling.nl/stopkindermishandeling/stop_img/documentatie/Criteria_kindermishandeling.doc> (accessed 26 May 2011), (full text of the dissertation available at <<http://arno.unimaas.nl/show.cgi?fid=8548>> (accessed 26 May 2011)).

¹¹⁰ See, e.g., D. Daro, ‘Prevention of Child Abuse and Neglect,’ in: J. E. B. Myers (ed.), *The APSAC Handbook on Child Maltreatment* (Third edition), (Sage, 2011), 17–37, at 17, 20.

¹¹¹ See K. E. Warner & T. Boat, ‘Preface,’ in: M. E. O’Connell et al. (eds.), *Preventing Mental, Emotional, and Behavioral Disorders Among Young People: Progress and Possibilities*, Committee on the Prevention of Mental Disorders and Substance Abuse Among Children, Youth and Young Adults: Research Advances and Promising Interventions; Institute of Medicine; National Research Council Washington, (The National Academies Press, 2009) (<www.nap.edu/catalog/12480.html> (accessed 26 May 2011), Report Brief for Researchers available at <www.bocycf.org/prevention_researchers_brief.pdf> (accessed 26 May 2011)).

¹¹² Recommendation (2006) 19 of the Committee of Ministers to [Council of Europe] member states on policy to support positive parenting, <<https://wcd.coe.int/ViewDoc.jsp?id=1073507&Site=CM>> (accessed 26 May 2011).

¹¹³ See National Effective Parenting Initiative (NEPI): <<https://effectiveparentingusa.org>> (accessed 26 May 2011), <<https://wcd.coe.int/ViewDoc.jsp?id=1073507&Site=CM>> (accessed 26 May 2011); K. T. Alvy, *An effective parenting initiative to make the United States of America a model child and family-friendly nation*, (Center for the Improvement of Child Caring): <www.ciccparenting.org/pdf/NPI.pdf> (accessed 26 May 2011) (also see <www.ciccparenting.org/cicc_effective.aspx> (accessed 26 May 2011)).

¹¹⁴ See D. L. Kirp, *Kids First: Five Big Ideas for Transforming Children’s Lives and America’s Future*, (Public Affairs (Perseus Books Group), 2011), 8.

¹¹⁵ The ‘five ideas that make up the kids-first agenda [...] are: 1. Give new parents strong support; 2. Provide high-quality early education; 3. Link schools and communities to improve what both offer children; 4. Provide mentors to youngsters who need a stable, caring adult in their lives; 5. Give kids a nest egg that helps pay for college or kick-start a career.’ (Ibid., 11.)

most human rights researchers will be unfamiliar. Moreover, contrary to the other elements of the big five, there are, to the author's knowledge, no examples of states in which a minimum standard for competent parenthood has been introduced in the national law.¹¹⁶ Further research is needed on this element in particular, and on its relationship to the other elements. Most attention will therefore be paid to this component of the big five.

3.3.2. SMECC-1. School child rights and parenthood education

Structural Prevention begins in the schools. The following three types of education may be discerned, and should be integrated in school curricula:

- Personal, Social, Health and Economic (PSHE) Education;¹¹⁷
- Human Rights and Citizenship Education (HRCE), or Education for Democratic Citizenship and Human Rights Education (EDC/HRE);¹¹⁸
- Children's Rights and Parenthood Education (CRPE), or Child Rights Education and Education for Responsible Parenthood (CRE/ERP).¹¹⁹

Schools should prepare children for child-friendly and inclusive (that is, tolerant and participatory) citizenship and sensitive (or 'responsive'¹²⁰) and democratic (or 'authoritative'¹²¹) parenthood. An inclusive education system is specified in Article 24 CRPD (on 'Education').

School parenthood education is provided in the UK. Parenting UK (a UK 'membership organisation for those working with parents'¹²²) states:¹²³

If the role of schools is to prepare us for adult life, it is crucial that the preparation considers parenting, the most important job most of us will ever do. [...] In 1999

¹¹⁶ National provisions such as, e.g., Article 246, Book 1, Dutch Civil Code, however, could provide a basis or starting point for elaboration into a full-fledged minimum standard. According to this Article, 'The following persons have no capacity to exercise authority over minors: minors, adults who are placed under guardianship and persons whose mental abilities are so disturbed that they are unable to exercise such authority, unless the disturbance is temporary.' (See J. C. M. Willems, 'Prikpil of prenatale aanpak: pleidooi voor een minimumstandaard,' *FJR – Tijdschrift voor Familie- en Jeugdrecht* (2011), 161–163.)

¹¹⁷ See for information on UK models: E. Formby et al., *Personal, Social, Health and Economic (PSHE) Education: A mapping study of the prevalent models of delivery and their effectiveness*, (Department of Education, 2011), available at <<http://education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR080>> (accessed 26 May 2011).

¹¹⁸ Council of Europe information and documentation available at the Council's EDC/HRE website: <www.coe.int/t/dg4/education/edc/default_en.asp> (accessed 26 May 2011).

¹¹⁹ See <www.parentinguk.org/3/schools-and-PSHE> (accessed 26 May 2011). Also see Articles 29 and 42 CRC, and Committee on the Rights of the Child, General Comment No. 1 (2001), Aims of education, available at <www2.ohchr.org/english/bodies/crc/comments.htm> (accessed 26 May 2011).

¹²⁰ See N. Eshel et al., 'Responsive parenting: interventions and outcomes,' 84 *Bulletin of the World Health Organization* 12 (2006) available at <www.who.int/child_adolescent_health/documents/84_992_999/en/index.html> (accessed 26 May 2011).

¹²¹ See K. Covell and R. B. Howe, *Children, Families and Violence*, 66 seq.

¹²² See <www.parentinguk.org/1/about-us> (accessed 26 May 2011).

¹²³ See <www.parentinguk.org> (accessed 26 May 2011), Schools & PSHE (<www.parentinguk.org/3/schools-and-PSHE> (accessed 26 May 2011)).

the [UK Department for Education] published frameworks for PSHE [Personal, Social and Health Education] and Citizenship that repeated the Government's wish to include parenthood education as a topic at all key stages.

Further research is needed as to the scope, form and effects of the implementation of child rights and parenthood education in UK schools, as well as to other examples, if any, in high-income states inside and outside the EU.

In its General Comment No. 13, the Committee on the Rights of the Child refers to several elements of 'Personal, Social and Health Education' without, however, making any reference to parenthood education:¹²⁴

Educational measures [...] include [...]: *For children:* provision of accurate, accessible and age-appropriate information and empowerment on life skills, self-protection and specific risks, including those relating to information and communication technologies and how to develop positive peer relationships and combat bullying; empowerment regarding child rights in general – and in particular on the right to be heard and to have their views taken seriously – through the school curriculum and in other ways [...].

3.3.3. SMECC-2. A legal Minimum standard for competent parenthood

According to Article 7 CRC, children have a right, as far as possible, to be cared for by their parents. But parents should not have a (legal) right to raise their child unless they meet minimum standards of child-rearing competency.¹²⁵ Therefore, the law should clearly define child-rights-based parental responsibilities and create a minimum standard for competent parenthood. Prenatal arrangement of temporary foster care or permanent adoption,¹²⁶ within or outside the expectant parents' family circle, to come into effect immediately or as soon as possible after childbirth, should be agreed upon by expectant or new parents who do not meet the minimum standard, and by a Parenthood Council composed, e.g., of parents, adolescents or young adults, social workers, and a juvenile court judge. These agreements should be reviewed by an expert body and ultimately court-imposed.

In its General Comment No. 13, in a paragraph on the 'need for child rights-based definitions,'¹²⁷ the Committee on the Rights of the Child states that

¹²⁴ General Comment No. 13, para. 41 (Educational measures) sub. (ii).

¹²⁵ For wide-ranging recent discussions of the ethical aspects of procreation, parenthood and parenting, see D. Archard and D. Benatar (eds.), *Procreation and Parenthood; The Ethics of Bearing and Rearing Children*, (Clarendon Press/Oxford University Press, 2010); N. Richards, *The Ethics of Parenthood*, (Oxford University Press, 2010).

¹²⁶ For arguments in favour of prenatal arrangement of adoption (and related reform of parentage laws), see the following three articles by J. G. Dwyer, 93 *Minnesota Law Review* 2 (2008), 407–492; J. G. Dwyer, 56 *UCLA Law Review* 4 (2009), 755–835; and: J. G. Dwyer, 37 *Capital University Law Review* 2 (2009), 293–320.

¹²⁷ General Comment No. 13, para. 17 (Legal analysis of Article 19 [CRC]: 'all forms of...': The need for child-rights-based definitions).

States Parties need to establish national standards for child well-being, health and development as securing these conditions is the ultimate goal of child caregiving and protection.

The Committee does not, however, go as far as to extend this to minimum standards for parental responsibilities. Therefore, the proposed legal standard in this section could be regarded as post-conventional – although arguments in its favour can be based on Article 3 para. 2 CRC (establishing a *Trias Pedagogica* of parents, children and the state, making the state ultimately responsible for a child's security and well-being¹²⁸) and/or Article 6 para. 2 CRC ('ensure to the maximum extent possible the survival and development of the child'), as well as, in a more direct sense, on Article 3 of the European Convention on Human Rights (as has been submitted above, in part one), or on Article 37 sub. (a) CRC, for that matter ('No child shall be subjected to inhuman treatment').

Authors in Canada (Vopat¹²⁹) and the US (Westman, president of Wisconsin Cares;¹³⁰ Dwyer¹³¹) have come up with useful 'post-conventional' proposals, arguments and suggestions. It should be added that having a legal minimum standard creates transparency and legal certainty. Discrimination, real or perceived, against parents with, e.g., intellectual disabilities¹³² will come to a stop once a minimum standard applies to everyone who wishes to raise a child. Although there are many prejudices and concerns, there is very little research on adult children raised by parents with intellectual disabilities.¹³³ The obligation to eliminate discrimination against persons with disabilities in all matters relating to, *inter alia*, parenthood is laid down in Article 23 CRPD (on 'Respect for home and the family').

Moreover, a minimum legal competent parenthood standard is likely to be the key catalyst and contributor for the much-needed paradigm shift from traditional arbitrary and interventionistic child protection laws and policies – which do not protect the human (and/or constitutional) rights of newborn persons – towards a child-rights-based proactive and

¹²⁸ See above, footnote 50, and below, footnote 134.

¹²⁹ M. C. Vopat, in: S. Brennan and R. Noggle (eds.), *Taking Responsibility for Children*, 73–96, at 83–86.

¹³⁰ Handout J. Westman, 'Preventing child abuse and neglect by the certification of parenthood,' in: Wisconsin Cares, Inc., *The Right of Newborn Babies: An Opportunity to Succeed in Life (Is a newborn baby a person or property?)*; *A proposal for affirming parental rights by a parenthood pledge*, (American Public Health Association presentation Denver, 2010), <<http://apha.confex.com/apha/138am/webprogram/Paper217562.html>> (accessed 26 May 2011), Handout (also see <<http://jackwestman.com>> (accessed 26 May 2011) and <www.wisconsincares.net> (accessed 26 May 2011)).

¹³¹ See J. G. Dwyer, 93 *Minnesota Law Review* 2 (2008), 407–492, at 467–468; J. G. Dwyer, 56 *UCLA Law Review* 4 (2009), 755–835, at 831–835.

¹³² See S. McGaw, T. Scully and C. Pritchard, 'Predicting the unpredictable? Identifying high-risk versus low-risk parents with intellectual disabilities,' 34 *Child Abuse & Neglect* 9 (2010), 699–710.

¹³³ See J. Faureholm, 'Children and their life experiences,' in: G. Llewellyn *et al.* (eds.), *Parents with Intellectual Disabilities: Past, Present and Futures*, (Wiley-Blackwell, 2010), 63–78, at 64.

constitutional *Trias Pedagogica* of parents, children and the state.¹³⁴ A minimum standard may therefore be seen as the linchpin of the ‘big five.’

What should or could such a standard contain? Vopat proposes the following five criteria, which, obviously, are open for debate. A parent, that is, everyone who wants to raise a child, should:¹³⁵

1. ‘pass a drug test’ (provide proof that he or she is not addicted to drugs or alcohol);
2. ‘provide proof of residence and employment (or, alternatively, receipt of welfare benefits)’;
3. ‘[...] have attained a high school diploma,’ which should be ‘conjoined with a mandatory child development or parenting class requirement’¹³⁶; ‘[...] separate parenting classes could be required for those that did not complete high school (or the high school parenting class)’¹³⁷;
4. ‘pass a background check that shows [he or she has] not been convicted of domestic violence or violence against a minor, or had another child in [his or her] care need protection’;
5. ‘sign an agreement that [he or she] will not neglect or abuse [his or her] child’ (or make a pledge – as Van Crombrugge has proposed¹³⁸ – to respect the rights of his or her child).

Wisconsin Cares has a more modest proposal than Vopat’s. Theirs is a proposal ‘for a parenthood pledge and a straightforward requirement that to be qualified to make it, means that one is not under the custody or guardianship of another person or the state.’¹³⁹ Since Vopat’s criteria are more transparent, more clearly child rights based, and less likely to indirectly discriminate against specific groups or individuals, such as persons with disabilities, his line of reasoning is to be preferred.

3.3.4. SMECC-3. *Child rights and parenting Education for parents-to-be*

Education, information and advice on positive (sensitive and democratic) parenting should be available to all parents, especially expectant and new parents. The Council of Europe has developed the concept of positive parenting, and encourages its member states to ban all corporal punishment and humiliation of children in the family within a legal framework providing all parents with education, information and professional support on non-violent and

¹³⁴ See J. C. M. Willems, ‘The Children’s Law of Nations: The International Rights of the Child in the Trias Pedagogica,’ in: *Developmental and Autonomy Rights of Children; Empowering Children, Caregivers and Communities*, second edition, (Intersentia, 2007), 65–106.

¹³⁵ M. C. Vopat, in: Brennan and Noggle (eds.), *Taking Responsibility for Children*, 84.

¹³⁶ *Ibid.*, 85.

¹³⁷ *Ibid.*, 86.

¹³⁸ Hans Van Crombrugge, a professor at the Higher Institute of Family Sciences in Brussels, made the proposal of the upbringing pledge in 2006 (<www.hig.be/documenten/Upbringing_pledge_HIG_2006.pdf> (accessed 26 May 2011)) and 2008 (H. Van Crombrugge, ‘The upbringing pledge as a framework for the parent-child relationship,’ in: H. Van Crombrugge et al. (eds.), *Shared Pedagogical Responsibility*, (Intersentia, 2008), 5–15.

¹³⁹ Wisconsin Cares, Inc.: see above, footnote 130; email to the author by Jack Westman 3 November 2010.

responsive child rearing.¹⁴⁰ A ban on parental corporal punishment is now effective in 16 of 27 EU – and 22 of 47 Council of Europe – member states, including the Netherlands since 2007. Outside Europe, eight states have a ban (July 2011): Costa Rica, Israel, Kenya, New Zealand, South Sudan, Tunisia, Uruguay, and Venezuela.¹⁴¹ The Committee on the Rights of the Child is very clear on its position on a legal ban of all forms of violence against children:¹⁴²

The Committee has consistently maintained the position that *all* forms of violence against children, however light, are unacceptable. ‘All forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States Parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child’s absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.

The Committee refers to education for parents, or on positive parenting – positive (or ‘good’) child rearing and positive (non-violent) discipline, in paragraphs on educational measures and on prevention measures:¹⁴³

Educational measures [...] include [...]: *For families and communities*: education on positive child rearing for parents and caregivers; provision of accurate and accessible information on specific risks and how to listen to children and take their views seriously [...].

Prevention measures include [...]: *For families and communities*: supporting parents and caregivers to understand, embrace and implement good child rearing, based on knowledge of child rights, child development and techniques for positive discipline [...].

3.3.5. SMECC-4. Child- and family-friendly social and economic policies

Children are entitled to parental direction and guidance – that is, to empowerment through adequate parental direction and guidance – in the exercise of their own independent rights (Article 5 CRC). It is therefore crucial that parents are empowered in manners that facilitate

¹⁴⁰ Recommendation (2006) 19 of the Committee of Ministers to [Council of Europe] member states on policy to support positive parenting, <<https://wcd.coe.int/ViewDoc.jsp?id=1073507&Site=CM>> (accessed 26 May 2011).

¹⁴¹ Sweden was the first state with a ban (1979); see <www.endcorporalpunishment.org> (accessed 26 May 2011), States which have prohibited (States with full abolition).

¹⁴² Committee on the Rights of the Child, General Comment No. 13 (2011), Article 19 [CRC]: The right of the child to freedom from all forms of violence (<www2.ohchr.org/english/bodies/crc/comments.htm> (accessed 26 May 2011)), para. 16 (Legal analysis of Article 19 [CRC]: ‘all forms of...’).

¹⁴³ General Comment No. 13, para. 41 (Educational measures) sub. (iii); para. 43 (Prevention measures) sub. (iii).

and support their responsibility to empower their children (of course more specifically if their children, or they themselves, have specific needs because of disabilities or economic, emotional or other serious problems), for which the prenatal period and the first years of life are the most deciding and beneficial ones. Consequently, this empowerment of parents should start before conception and certainly before childbirth. What may – and should – help is that the best interests standard (as defined, ultimately, by neurobiology and developmental psychology) is unique in human rights law in that ‘the best interests of the child’ is a prioritized principle – budgetary and otherwise (Article 3 para. 1 *juncto* Article 4 and Article 6 para. 2 CRC). For these reasons, it is submitted that all laws and policies that may affect children and families should be made child friendly, first of all in relation to family income, parental leave (to promote attachment security, parent education, and expectant and new parent groups), and high-quality childcare. The Nordic states provide good examples for this.¹⁴⁴ Child-friendly policies also should include full employment and on-the-job training policies for young persons, including young persons with disabilities, especially if they are parents or expectant parents. An inclusive work environment is stipulated in Article 27 CRPD (on ‘Work and employment’).

A recently published book on Nordic social work states:¹⁴⁵

[In the] Nordic countries, extensive support for families and children is prioritised against more controlling measures, and state intervention is seen more as services and support than control and surveillance. [...] [Nordic researchers] understand support for parents as being universal services and financial support, such as parental leave schemes, equal access to institutions of early education and schools, health care services, and a system of various schemes of financial support for families with children, including child/family benefits. These are aimed at creating equal living standards and equal opportunities of all children rather than more selective support for certain ‘problematic’ or ‘excluded’ families. [...] What is common [...] in the Nordic countries [...] is the discussion that all families with young children need support in their everyday life and child rearing [...].

In General Comment No. 13, the Committee on the Rights of the Child presents a whole list of child- and family-friendly social and economic policy measures and social programmes. For high-income states, the most relevant are probably:¹⁴⁶

– Integration of child caregiving and protection measures into mainstream systems of social policy;

¹⁴⁴ See K. Covell and R. B. Howe, *Children, Families and Violence*, 129 *seq.* For an Australian Manifesto, frequently referring to Nordic states and policies, see the Appendix at the end of this article.

¹⁴⁵ M. Kuronen and P. Lahtinen, ‘Supporting families: the role of family work in child welfare,’ in: H. Forsberg and T. Kröger (eds.), *Social Work and Child Welfare Politics Through Nordic Lenses*, (The Policy Press, 2010), 69–70.

¹⁴⁶ General Comment No. 13, para. 40 (Social measures) sub. (i) and (ii).

- Identification and prevention of factors and circumstances which hinder vulnerable groups’ access to services and full enjoyment of their rights (including indigenous and minority children and children with disabilities amongst others);
- Poverty reduction strategies including financial and social support to families at risk; [...]
- Reduced demand for and access to alcohol, illegal drugs and weapons;
- Collaboration with the mass media and information and communication technologies industry to devise, promote and enforce global standards for child caregiving and protection; [...]
- [C]hildcare, early child development and after-school care programmes for children; [...]
- [C]ommunity-based mutual help groups to address psychosocial and economic challenges (for example parenting [...] groups); welfare programmes to support families’ standard of living including direct allowances to children at a certain age; counselling support to caregivers having difficulties with employment, housing and/or child rearing; therapeutic programmes to assist caregivers with domestic violence, addictions to alcohol or drugs or with other mental health needs (including mutual help groups).

3.3.6. SMECC-5. A high-quality Continuum of care for children and families

In order to achieve higher standards of professionalization and integration of institutions and services for children and families (and, at a minimum, their co-ordination and co-operation), a national Care continuum such as the one presently implemented in the Netherlands¹⁴⁷ should be created to provide programmes, counselling, therapy, guidance and assistance to all parents who may need them, with special or extra consideration for parents and children with emotional problems and emotional and other impairments.¹⁴⁸

Professionalization (including integration and co-ordination and co-operation) of institutions and services (Article 3 para. 3 CRC) may be seen as a basic CRC principle.¹⁴⁹ In General Comment No. 13, this is exemplified by the Committee on the Rights of the Child in its interpretation of the term ‘appropriate’ in Article 19 para. 1 CRC:¹⁵⁰

The term ‘appropriate’ refers to the broad range of measures cutting across all sectors of government, which have to be used and be effective in order to prevent and respond to all forms of violence. ‘Appropriate’ cannot be interpreted to mean acceptance of some forms of violence. An integrated, cohesive, interdisciplinary and co-ordinated system is required, which incorporates the full range of measures

¹⁴⁷ See above, footnote 55.

¹⁴⁸ See above, footnote 91.

¹⁴⁹ See above, footnote 50.

¹⁵⁰ General Comment No. 13, para. 37 (Legal analysis of Article 19 [CRC]: ‘all appropriate legislative, administrative, social and educational measures’).

identified in paragraph 1 of Article 19 across the full range of interventions listed in its paragraph 2. Isolated programmes and activities which are not integrated into sustainable and co-ordinated government policy and infrastructures will have limited effects. Child participation is essential in the development, monitoring and evaluation of the measures outlined here.

4. CONCLUSION

As the reader knows, the Convention on the Rights of the Child was adopted in 1989 and the Convention on the Rights of Persons with Disabilities in 2006. In its General Comment No. 13, adopted in February 2011, the Committee on the Rights of the Child goes a long way in trying to capture developments in human rights law and psychological and neurobiological science from 1989 to 2006. However, since 1989, the gap between what we know about the basic needs of young children, and the importance of meeting basic needs in addressing specific needs, on the one hand, and the use of this knowledge to change our laws and policies, on the other hand, has become too great even for the Committee to fully take into account, let alone bridge.

What we know today can be summarized as follows. From conception until the first three or four years of our lives, the cerebral infrastructure (brain ‘templates’) is laid for our health, personality and resilience. The outcome depends on the balance of risk or stress factors and protective or opportunity factors in our early lives (minus nine months until age four), basically factors that – directly or indirectly – influence the sperm quality of our father, the physical and mental health of our mother, and, after birth, the mental health (sensitivity, responsiveness) of our mother and father and other caregivers. If the balance is negative, and resulting poor brain development, insecure attachment and early traumatization are not repaired or resolved (the sooner the better, and insofar as possible), we may have lifelong physical and mental health problems, personality-related problems (personal, relational and social), and stress-related problems (emotional and behavioural; greater vulnerability for real or perceived stress).

These are problems that are likely to be transmitted, in one way or another, to the next generation. If the balance is very negative, the situation may be labelled child maltreatment. The long-term effects may be classified as either internalization or externalization of unresolved childhood trauma. Examples of the former are depression, self-mutilation and suicide; of the latter, antisocial behaviour, violence, and (violent) crime. Disability is seen as a risk factor for child maltreatment. This includes both disability in a child (any form: physical, mental or emotional – socio-emotional, psychological, psychiatric), and ‘emotional disability’ in a parent, more specifically a serious lack of sensitivity to the needs of an infant, toddler and older child, due to unresolved childhood trauma or other chronic condition of mental ill-health.

All of this might be summed up in three words: *infant attachment security*. Even in high-income states, one third of infants are not securely attached to their primary caregivers. The human, social and economic costs are enormous. These issues are now well known, but what do we do?

Parental empowerment and parental sensitivity are crucial factors for infant attachment security. Together, these three: parental empowerment, parental sensitivity, and attachment security, should be considered fundamental rights of newborn persons. Attachment security should be considered a basic human right in itself, as has been suggested elsewhere by the present author.¹⁵¹ However we are still not educating and empowering children and parents on these issues. We are still not screening parents-to-be on parental competency. We are still not generously supporting those who meet a minimum standard for competent parenthood. And we are still not making prenatal foster care or adoption arrangements with expectant parents who do not meet such a minimum standard. We still turn a blind eye to these fundamental rights of newborn persons. The rights of newborn persons are still overlooked by the human rights movement, including the women's rights, the child rights and the disability rights community. Children's basic developmental needs – including some children's specific needs – are children's best interests. Children's best interests are the protective factors for healthy holistic child development, as conveniently enumerated by the Committee on the Rights of the Child:¹⁵²

Protective factors include stable families; nurturing child rearing by adults who meet the child's physical and psychosocial needs; positive non-violent discipline; secure attachment of the child to at least one adult; supportive relationships with peers and others (including teachers); social environment that fosters pro-social, non-violent and non-discriminatory attitudes and behaviours; high levels of community social cohesion; and thriving social networks and neighbourhood connections.

Meeting basic developmental needs essentially means two things:

(1) The 'responsibilization' (creating transparency and clarity in law and policy about child rights based parental responsibilities) and the empowerment (through information, education, support, therapy and so forth) of parents and other caregivers on the basis of a legal Minimum standard for competent parenthood – which in turn creates a basis for School child rights and parenthood education for children, as well as for child rights and parenting Education for parents-to-be; and

(2) The professionalization and integration of institutions and services – in order to create a high-quality Continuum of care, embedded in and strengthened by Child- and family-friendly

¹⁵¹ J. C. M. Willems, 'Introduction,' in: J. C. M. Willems (ed.), *Children's Rights and Human Development*, 1–44, at 4.

¹⁵² General Comment No. 13, para. 65 sub. (e) (Resilience and protective factors).

social and economic policies. Together, these two form a ‘big five’ of so-called SMECC policies, which are partly overlapping and mutually reinforcing. After all, human rights are about education, empowerment and emancipation, and so are the rights of newborn persons, and of all children, including children with disabilities.

APPENDIX: CHILD- AND FAMILY FRIENDLY POLICIES¹⁵³

CHILDREN'S WELLBEING MANIFESTO – POLICY INITIATIVES PROMOTING HEALTHY EMOTIONAL DEVELOPMENT IN CHILDREN (AUSTRALIA, 2006)¹⁵⁴

Preamble

All societies are profoundly shaped – for better or worse – by how we rear children. This has been the overwhelming conclusion of recent ground-breaking research across a range of disciplines. A new consensus is emerging on how we should care for our children. Throwing new light on how best to help children flourish, this knowledge offers compelling evidence as to the kinds of social policies that will help all parents in their vital task, thereby reducing a host of societal dysfunctions, improving public health and social sustainability.

The following propositions are based on the best initiatives that have been tried and tested in numerous countries, and/or withstood rigorous tests of cost-benefit analysis. Such investments in the wellbeing of children, psychologically as well as physically, have been convincingly shown to yield economic as well as social rewards far exceeding the investment. More significantly, they are measures aimed at supporting what is most important, irreplaceable and ultimately not measurable: familial love and emotional wellbeing.

The main source of children's emotional wellbeing comes from *relationships* – from their deepest attachments to mothers, fathers, grandparents and a few cherished others. Early childhood in particular is a time when children's wellbeing and capacity to flourish are overwhelmingly about love, attachment and connectedness, and so it is a time they should spend mostly in the presence of these vital attachment figures. In recognition of this universal truth, social policy must re-orient itself towards supporting young children's right to remain, for the first two to three years, as much as possible in the presence of their 'attachment' relationships.

In a world increasingly driven by imperatives of profit and market forces, we hold that parental and family love matters most, it is at the very centre of human and social wellbeing; and thus we propose the following ways to support parents in the most important job in the world. The manifesto addresses the following 15 points:

1. Establishment of new community 'hubs' for parent support called: 'Parent and Child Support Centres' in every municipality.
2. Increased support for early-intervention initiatives, particularly for disadvantaged populations.

¹⁵³ See above, footnote 144. Some proposals in the Manifesto overlap with other SMECC elements and may, e.g., be linked to the Care continuum (proposals 1–3), or to parenting Education on non-violent (that is, positive) childrearing (proposal 14).

¹⁵⁴ Authored by: Anne Manne, writer, author of: *Mothering – how should we care for our children?*; Robin Grille, psychologist, author of: *Parenting for a Peaceful World*; Kali Wendorf, social ecologist and editor of: *Kindred magazine*; <<http://our-emotional-health.com/manifesto.html>>, <www.kindredcommunity.com/about/about-kindred/childrens-wellbeing-manifesto/p/80>, accessed 17 September 2011. For more information on the Manifesto, see Robin Grille, 'The rod, the paddle, and Abu Ghraib: the state of childhood in the USA, its domestic and foreign policy sequelae, and a proposal for social policy solutions,' *Journal of Psychohistory*, Winter [January] 2010, <http://findarticles.com/p/articles/mi_7622/is_201001/ai_n45883036/pg_4/?tag=mantle_skin;content> (accessed 17 September 2011).

3. Encourage hospitals to increase their focus on the psychological needs of mothers and infants surrounding labour.
4. Provide support for mothers to aim towards full-term breastfeeding (as recommended by the World Health Organization and UNICEF).
5. Extend Medicare health care cover.
6. Encourage and expand support for non-profit, community based or co-operative childcare.
7. Improve the quality of existing childcare.
8. Support Children's Right to Play.
9. Introduce maternity and paternity leave with pay.
10. Support fathers' involvement in children's lives.
11. Workplace Reform: encourage mother/father-friendly workplaces.
12. Free re-training and remission of education expenses for all primary caregivers on re-entry to workplace.
13. Universal free, non-compulsory Preschool for 3 and 4 year olds.
14. Legislate against all corporal punishment of children.
15. Prohibit television, print and in-school advertising and marketing that targets children under 12.

1. Establishment of new community 'hubs' for parent support called: 'Parent and Child Support Centres' in every municipality

Parenting is best done in company – in a convivial community of other parents and caregivers. Children flourish in connected communities, where social infrastructure is provided via a 'hub and spoke' model:

Beginning with pre-natal visits to connect new parents-to-be to a community hub (the Parent and Child Support Centre) which provides contact with the local community of parents, connecting them with a broad range of social networks, services and facilities for parents and other caregivers. These 'hub' centres should include 'spokes' – i.e., outreach to specialist support services where necessary. Some existing similar examples: Danish 'Folk' centres housing children's services and networks, the Parent Support Centres of Boulder (Colorado) and Vermont USA, toy libraries, playgroups, Bub Hubs, babysitting clubs, child care cooperatives, homework clubs staffed by retired volunteers.

2. Increased support for early-intervention initiatives, particularly for disadvantaged populations

Attachment-oriented home visits for all parents with a new baby, additional for 'at-risk' families. Visits to be continued after birth to assist new parents, providing practical advice and support when necessary and assessing the need for additional healthcare services. A range of combined measures can be utilised, including income support, parenting support and high quality, childcare programs of a specialised nature (such as the Perry Preschool) and parenting support programs such as Newpin and HIPPY (NZ Home Instruction Program for Preschool Youngsters).

3. Encourage hospitals to increase their focus on the psychological needs of mothers and infants surrounding labour

Beginning with supporting and respecting mothers' autonomy and right to choose, this can include: increased support for home-like birthing rooms adjoining hospitals; encouragement of natural birthing methods and home-births except in cases of clear medical risk.

4. Provide support for mothers to aim towards full-term breastfeeding (as recommended by the World Health Organization and UNICEF)

Necessary support includes:

- Adequate maternity leave provisions (see proposition 9) and workplace reforms (see proposition 11);
- Encouraging maternity hospitals to comply with UNICEF’s ‘Baby-Friendly Hospitals Initiative’ designation;
- Medicare cover for breastfeeding support services (see proposition 5).

5. Extend Medicare health care cover

Extend Medicare health care cover to include: home visits by Lactation Consultants; home-birth midwives and doulas; multi-disciplinary care – including psychology [psychotherapy] and complementary medicine – for maternal and paternal post-natal depression.

6. Encourage and expand support for non-profit, community based or co-operative childcare

Quality childcare is not compatible with profit-making for shareholders. Expand support for alternatives to corporate childcare, especially alternatives that also support working mothers – such as community childcare services, family day-care, parent co-ops. Provide generous allowances for grandparent carers.

7. Improve the quality of existing childcare

Present regulations in Australian childcare are inadequate in some areas. Increased funding should be explicitly targeted at improving the quality of existing care. Raise the ratios of caregivers to babies to 1:2, and improve ratios for toddlers. Keep overall size of centre and groups small. Introduce national standards to replace present hodgepodge between states and the Federal Government. Better pay and training for all childcare workers.

8. Support Children’s Right to Play

Childhood is now dominated by the values of a competitive, achievement orientated culture. It is increasingly spent within the confines of institutions – early childcare, school, after and before school care, holiday programs, and structured activities dominated and organised by adults. A child is not simply an investment unit where inputs now promise later returns. All adult caregivers should respect children’s right to dream, potter and play freely.

9. Introduce maternity and paternity leave with pay

European-style parental leave of two to three years, involving the right to return to previous job, as practised in France, Finland, Norway and Sweden. Britain has recently followed suit, introducing parental leave for two years. The Australian Industrial Relations Commission, following the ACTU [Australian Council of Trade Unions] test case, recommended an immediate extension of parental leave to two years and the right to part-time work. Offer parents a choice between home-care allowance or funds for a high-quality childcare place – as in Finland, Norway and France.

10. Support fathers’ involvement in children’s lives

No mother should be left isolated and alone with the task of mothering, and no father should be expected to be disengaged from his children and family. Involved fathers help children flourish. The Parent and Child Support Centres should be father-friendly – i.e., have posters of fathers and children,

not just mothers, and have information on fathering and fathers' networks as a clear message that fathers are essential; that some fathers share the care or are primary caregivers, and are a part of the parenting community. Introduce paid paternity leave for up to four weeks at time of birth. Also, workplace agreements that accommodate fathers' need to spend adequate time with their families, and fathers' occasional need for carer's leave.

11. Workplace Reform: encourage mother/father-friendly workplaces

- Workplace-based childcare, with guaranteed breastfeeding breaks.
- Right to part-time work for primary caregiver with children under school age.
- Right to work a 6-hour day (with reduced pay) until child is 8 years (as in Sweden).
- Expand carer's sick leave.
- Introduce the 35-hour week. Families need time all together.
- Gradual transition back to work after maternity or parental leave. The primary caregiver should not be given little choice but to return suddenly to a full working week, with babies in childcare for ten hours a day: an extreme separation model.

12. Free re-training and remission of education expenses for all primary caregivers on re-entry to workplace

The entire visible economy depends upon the invisible heart: unpaid caring work. All of society benefits from this vital work. Yet caregivers often suffer a life-long 'care penalty' for performing this task. In any just, fair and sustainable society it is wrong to 'free ride' on caring labour while giving little in return. Unpaid work should also be part of the census data.

13. Universal free, non-compulsory Preschool for 3 and 4 year olds

All pre-schools and childcare centres to have open-door policy to parents, allowing for graduated and child-led separation from parents (as in the Swedish 'open pre-school' system).

14. Legislate against all corporal punishment of children

Abolish all corporal punishment at home and in all educational institutions, in line with our obligations under Article 19 of the UN Convention on the Rights of the Child. This has already been accomplished in [30] nations [July 2011, JW¹⁵⁵], and there are several more countries preparing to legislate to protect children from violence.

15. Prohibit television, print and in-school advertising and marketing that targets children under 12

This has already been done in Scandinavia, and more countries are considering reform to their advertising codes. Children are to be respected as children, not exploited as consumers.

[10.08.2012; 14.985/21.282 words]

¹⁵⁵ See Global progress towards prohibiting all corporal punishment; Prepared by the Global Initiative to End All Corporal Punishment of Children (<www.endcorporalpunishment.org>), July 2011, <www.endcorporalpunishment.org/pages/pdfs/GlobalProgress.pdf> (accessed 18 September 2011).