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## Article 31 of the CRC

### The Right to Play, Rest and Leisure: A Forgotten Right for Children?

*Sophie McNeill\**

#### Introduction

Article 31 of the Convention on the Rights of the Child (CRC) concerning the rights to play, rest and leisure for children, which is equally protected under other legal instruments at domestic or international and European level,<sup>1</sup> appears to be neglected by governments in activities such as urban planning, by schools in the determination of curriculum and even by parents in pressuring their children to place studying about play. This is especially so in modern Western developed societies where it can appear as a 'luxury' or, on the contrary, regarded as obvious rights. Perhaps because when a child lives in a privileged environment and country, their rights are presumed to be protected, compared to a child who lives in a war-torn country or is displaced through natural disasters or for economic reasons. This is not always the case, however, as less immediate threats such as obesity and bullying threaten a child's rights under article 31.

Furthermore, the modern conditions of living, encompassing school life and private home life, have greatly, and paradoxically, contributed to the increasing difficulty of realising these rights. The best example of this is the reduction of the time to play, rest and leisure because of an increasing school workload. The consequences of this oversight, or neglect, to adequately protect these rights of children cannot be underestimated in terms of mental health and well-being of children and its impact on society, especially on the formation of future generations of well-rounded adults. More specifically, protecting these rights can potentially reduce and combat many societal and health issues, such as obesity, bullying and isolation. As such, it should be afforded sufficient promotion and protection by governments. This author,

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<sup>1</sup> Such as the International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1996, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), art 7, provisions for the implantation of the CRC are included in Ombudsman for Children Act 2012 and Children First Act 2015 in Ireland. The EU upholds the CRC and provides for the protection of children's rights under article 24 of the Charter of Fundamental Rights of the European Union. See also European Parliament, 'EU Framework of law for children's rights' (2012).

therefore, argues that a shift must occur in the protection and consideration of these rights by governments.

This article seeks to assess the implementation of article 31 of the CRC in Contracting States with a focus on measures adopted by Contracting States. Several Contracting States will be assessed in order to demonstrate the varying responses to article 31 obligations and cultural trends towards children's rights. This article will first place the CRC and article 31 in a global context. It will then discuss the current response by Contracting States to the rights to play, rest and leisure. Practical threats to article 31 will be examined and State responses will be critically assessed. Next, the social issues influencing the cultural and governmental response to the right to play, rest and leisure will be outlined and assessed. Finally, a suggested government action plan will be provided to demonstrate the possible solutions that could be adopted at domestic level to combat the obstacles to article 31 rights and encourage its promotion and protection.

## 1. Background

The CRC guarantees basic human rights to children, including the right to survival, the right to development of their full physical and mental potential, the right to participation in family, cultural and social life, and the right to play.<sup>2</sup> Children are a particularly vulnerable class of society, as they are fully dependant on parents, carers, guardians, teachers and others in a position of responsibility like social workers, foster carers. They, therefore, require a greater level of protection than some other segments of the population. The CRC was designed to provide just such protection and entered into force in September 1990.<sup>3</sup> To date, it has been ratified in 196 countries.<sup>4</sup> The CRC incorporates both civil and political rights and socio-economic rights. The right to play, rest and leisure parallels article 7 (the right to rest and leisure) of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the General Assembly in 1966 and enforced from 1976.<sup>5</sup> The ICESCR has 164 parties, with six signatory parties failing to ratify.<sup>6</sup>

It is important to define what is meant by 'child' and 'childhood'. A child, traditionally, is described as a minor, although such a definition is less than satisfactory. A 'child' could be

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<sup>2</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) preamble, arts 6 and 31.

<sup>3</sup> 'Convention on the Rights of the Child' (*United Nations Treaty Collection*) <[https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800007fe&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800007fe&clang=_en)> accessed 10 August 2019.

<sup>4</sup> *ibid.*

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1996, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

<sup>6</sup> 'Status of Ratification: International Covenant on Economic, Social and Cultural Rights' (*Office of the High Commissioner of United Nations Human Rights*) <<http://indicators.ohchr.org/>> accessed 10 August 2019.

separated into different stages of development from toddler to child, to teenager, to young adult. All of these stages are of equal importance in the shaping of a person and as such deserve equal protection.<sup>7</sup> Article 31 rights would arguably shift in their requirements with each developmental stage.<sup>8</sup> A toddler has different needs under article 31 than a young adult. Nonetheless, a child is a child, first and foremost, and all children have the right to a childhood.<sup>9</sup> Article 31 rights to play, rest and leisure are perhaps less well-known, yet they are of vital importance for the development and growth of the child,<sup>10</sup> and are perhaps overlooked in favour of more pressing rights such as life, food, shelter and care. This being said, article 4 of the CRC requires Contracting States to take all legislative, administrative and other measures for the implementation of all rights contained therein.<sup>11</sup> Moreover, for children to grow and reach their full potential, they need a balanced, loving childhood, and a large part of that is being able to relax and play.<sup>12</sup> The psychological impact and growth these rights provide should not be overlooked so easily. The right to play is particularly important in times of crisis, man-made or natural.<sup>13</sup> It is long established that through play children can establish social relations with peers, regardless of status or class, and can contribute to the building of the culture of their communities.<sup>14</sup> Children's ability to play together breaks down walls built by different backgrounds, particularly on public playgrounds and in public settings, so this right plays a role in encouraging social mobility, in shaping society and the culture and values of future generations.

## 2. The Right to Play, Rest and Leisure

Having described the CRC and the rights to rest, play and leisure, this section considers the responses of governments to these rights. As indicated above, these rights are not considered to be particularly important by international standards, especially where children are denied

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<sup>7</sup> See Carolyn Meggitt, *Child Development: An illustrated guide* (Pearson Education, 2012); Jonathon Doherty and Malcolm Hughes, *Child Development: theory and practice 0-11* (Pearson Education, 2009); John Santrock, *Child development* (McGraw-Hill, 2004).

<sup>8</sup> See Madeleine Leonard, *The Sociology of Children, Childhood and Generation* (Sage, 1 December 2015).

<sup>9</sup> Department of Children and Youth Affairs, 'Children First: National Guidance for the Protection and Welfare of Children' (2011) ix.

<sup>10</sup> CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 31. See also Dr David Whitebread, 'The Importance of Play: A report on the value of children's play with a series of policy recommendations' (Toy Industry of Europe, April 2012); 'UN Convention on the Rights of the Child' (*International Play Association*, 1 May 2012) <<http://ipaworld.org/chilids-right-to-play/uncrc-article-31/un-convention-on-the-rights-of-the-child-1/>> accessed 10 August 2019; 'Why play is important' (*Play England*) <[www.playengland.org.uk/about-us/why-play-is-important/](http://www.playengland.org.uk/about-us/why-play-is-important/)> accessed 10 August 2019.

<sup>11</sup> CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 4.

<sup>12</sup> Department of Child and Youth Affairs, 'Better Outcomes Brighter Future Report' (2014).

<sup>13</sup> International Play Association, 'Children's Right to Play and the Environment' (Discussion Paper for the UN CRC Day of General Discussion, 2016) 2.

<sup>14</sup> International Play Association: Promoting the Child's Right to Play, 'Children's Right to Play and the Environment' (Discussion Paper for the UN CRC Day of General Discussion, 2016) 1.

even more basic rights such as the right to education or freedom from child marriage.<sup>15</sup> However, as described above, play and recreation are essential to the health and well-being of the child. Further, they promote creativity, imagination, self-confidence, self-efficacy, emotional development and strengthen skills (physical, social and cognitive).<sup>16</sup> To what extent can the government be forced to provide the best conditions to guarantee the rights to play, rest and leisure for children? Given the ambiguity of these rights, it is difficult to impose accountability. Is it enough to impose a negative obligation on States not to interfere with the right to play, or is a positive obligation required? There are a number of factors necessary for the right to play to be realised. These include the ability to play outdoors, with adequate space and limited supervision; opportunities to socialise and play with other children in games and sports; and recognition of the value and legitimacy of the right to play.<sup>17</sup> From these factors it is clear that adequate planning, financial resources and design is required to allow children to fully access article 31.

Although States should invest time and money into article 31 rights to achieve full implementation, many States have been criticised for failing to do so, despite a legal commitment to secure all rights within the CRC upon ratification.<sup>18</sup> Given the benefits described, the right to play is one of the most fundamental rights of the child, and accordingly, should be given adequate legal protection by governments, but governments do not appear to be fulfilling their obligations. For example, in Ireland, the right to play is implied under the Criminal Justice Act 2006, which provides that a child has the right to socialise in their

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<sup>15</sup> World Bank, Children's Investment Fund Foundation and Global Partnership for Education, 'Girls' Education and Child Marriage in West and Central Africa' (October 2017). See also Girls Not Brides, <<https://www.girlsnotbrides.org/about-child-marriage/>> last accessed 7 March 2020.

<sup>16</sup> Commission on the Rights of the Child, 'General Recommendations (no 17)' (17 April 2013) UN Doc CRC/C/GC/17, 4.

<sup>17</sup> International Play Association, 'Children's Right to Play and the Environment' (Discussion Paper for the UN CRC Day of General Discussion, 2016) 3.

<sup>18</sup> CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 4. See also Minister Zappone, 'Play and recreation projects in funding "€250,000 to get children active through play, water sport and adventure"' (Department of Child and Youth Affairs, 19 May 2017) in which the Minister afforded €250,000 to recreational activities for children out of a €1.3bn budget to the DCYA ('Budget 2017' (Department of Child and Youth Affairs, 11 October 2016)); Committee on the Rights of the Child, 'Concluding Observations of the fifth periodic report of Great Britain and Northern Ireland' (2016) UN Doc CRC/C/GBR/CO/5 in which the UN criticised the UK for failing to provide sufficient funding to promote and protect the right to play; Committee on the Rights of the Child, 'Concluding Observations on the fifth periodic report of Denmark' (2017) UN Doc CRC/C/DNK/CO/5 in which the Committee called on Denmark to increase its efforts in promoting the right to rest, play and leisure in Greenland and for the provision of greater funding to playgrounds and staffing (para 38); Committee on the Rights of the Child, 'Concluding Observations on the fifth periodic report of France' (2016) UN Doc CRC/C/FRA/CO/5 in which the Committee called on France to intensify its efforts in promoting the right to rest, play and leisure at para 72(e); Committee on the Rights of the Child, 'Concluding Observations on the fourth periodic report of France' (2009) UN Doc CRC/C/FRA/CO/4 the Committee stated that the State should provide adequate and accessible playground spaces to protect the right to rest, play and leisure at para 8.3.

neighbourhood, so long as they are not causing harm or harassment to others.<sup>19</sup> In 2014, the Department of Child and Youth Affairs recognised the importance of protecting the right to play following research into the benefits of play on a child's physical and mental health.<sup>20</sup> Furthermore, the government acknowledged the importance of playing during childhood. Playing develops a child's cognitive and emotional strengths and skills, as well as teaching children how to work together, break social barriers and develop key communication skills.<sup>21</sup> Following this research and acknowledgement of the importance of this children's right, the government launched a plan to encourage play among children and young people by committing to building, and supporting, local youth and sport facilities.<sup>22</sup> Although article 31 is mentioned briefly in this literature, no in-depth analysis is afforded to it nor is any direct government commitment made to its protection. Is this perhaps Irish authorities acknowledging the existence of the right under international law while making no efforts to truly analyse and protect it?

This seems to be a recurring theme amongst Contracting States. In the UK, the Children's Commissioners came together to offer their support for the promotion and protection of play and to commit to intensifying their efforts.<sup>23</sup> This comes amidst reports that 214 play areas in England have been closed due to budget cuts.<sup>24</sup> Similarly in Spain, the Committee on the Rights of the Child have criticised the Spanish government for failing to provide adequate, safe and accessible playgrounds.<sup>25</sup> The importance of play is acknowledged by States, yet funding, investment, promotion and protection of this article 31 right is extremely limited.

### 3. Practical Threats to Article 31

There are a large number of factors that can affect the quality, ability and opportunity to play. These threats take the form of financial constraints on budgets for play areas, urbanisation, quality of play (particularly in competitive sports), time constraints and commercialisation. Threats to the right to play are numerous and little protection is afforded, despite the growing number of reports highlighting the vast benefits of playing, including from the Department of Youth and Affairs, the International Play Association, the General Committee on the Rights

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<sup>19</sup> Criminal Justice Act 2006, pt 12.

<sup>20</sup> Department of Child and Youth Affairs, 'Better Outcomes Brighter Future Report' (2014) 21.

<sup>21</sup> *ibid* 55-56.

<sup>22</sup> *ibid* 59.

<sup>23</sup> Sophie Bolt, 'UK Children's Commissioners stand together for a child's right to play' (*Play England*, 31 July 2018) <[www.playengland.org.uk/uk-childrens-commissioners-stand-together-for-a-childs-right-to-play/](http://www.playengland.org.uk/uk-childrens-commissioners-stand-together-for-a-childs-right-to-play/)> accessed 10 August 2019. See also Scotland's Commissioner for Children and Young People, 'Children's right to play, culture and arts' (2014) in which the right to play is extensively discussed. Since 2014, however, the Commissioner has not demonstrated very much progress on the promotion and protection of play in Scotland.

<sup>24</sup> Matt Broomfield, 'Hundreds of children's playgrounds close due to Tory cuts' *Independent* (London, 13 April 2017).

<sup>25</sup> Commission on the Rights of the Child, 'Concluding Observations on the fifth and sixth periodic report of Spain' (22 January 2018) UN Doc CRC/C/ESP/CO/5-6 para 41.

of the Child and Children's Commissioners.<sup>26</sup> The dwindling ability of children to play is apparent in the increasing pressure placed on children as they pass through the education system. The older the child, the less opportunity for relaxation and leisure. Violence at school, at home and in the streets is also posing a significant threat to the rights of children.<sup>27</sup> Yet, there is very limited legal protection afforded to the right to play that is invaluable in the life and development of a child.

In 2013, the Committee on the Rights of the Child, in its General Recommendations, highlighted its concern about the difficulties faced in recognition by Contracting States of the rights contained in article 31. Particular concern was drawn to the lack of recognition of the significance of play in the lives of children.<sup>28</sup> State funding for play areas, youth centres and recreational zones is not a priority, as governments favour investments that could potentially create revenue or encourage foreign investments over recreational areas that will require upkeep, staffing and initial construction. In Cork City, Ireland, a playground worth £600,000 was opened in 2015. The park is one of the most expensive ever built in Ireland and is monitored by CCTV, ensuring child safety and limiting the need for adult supervision and management while children play.<sup>29</sup> It contains sensory-rich structures, specifically designed to encourage play for children with developmental disabilities. Unfortunately, it is one of a kind and no plans have yet been made to replicate this area in other locations. Similarly, in other Member States of the EU, a project has been launched to create playgrounds that are practical, robust, educational and safe for children.<sup>30</sup> The EU has invested €225,000 in this project, 'Playground Energy', to develop playgrounds across the EU in an attempt to encourage children to play in a safe, open area, rather than on electronic devices. While this is a welcome development and is an encouraging start to the protection and promotion of the right to play, compared to other areas of EU funding, this investment is very small.<sup>31</sup> The EU

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<sup>26</sup> Department of Child and Youth Affairs, 'Better Outcomes Brighter Future Report' (2014); International Play Association, 'Children's Right to Play and the Environment' (Discussion Paper for the UN CRC Day of General Discussion, 2016); Committee on the Rights of the Child, 'General Recommendations (no 17)' (17 April 2013) UN Doc CRC/C/GC/17; Children's Commissioner, 'Playing Out' (2018); Sophie Bolt, 'UK Children's Commissioners stand together for a child's right to play' (*Play England*, 31 July 2018) <<https://www.playengland.org.uk/uk-childrens-commissioners-stand-together-for-a-childs-right-to-play/>> accessed 10 August 2019. See also Scotland's Commissioner for Children and Young People, 'Children's right to play, culture and arts' (2014).

<sup>27</sup> Dr Geoffrey Shannon, 'Report of the Special Rapporteur for Children: A Report Submitted to the Oireachtas' (2016) 71.

<sup>28</sup> Committee on the Rights of the Child, 'General Recommendations (No 17)' (17 April 2013) UN Doc CRC/C/GC/17, 3.

<sup>29</sup> Eoin English, '€600,000 facility sets new standard for playgrounds' *Irish Examiner* (Dublin, 25 July 2015).

<sup>30</sup> 'Smart Playgrounds for Children' (*Europa*) <[https://europa.eu/investeu/projects/smart-playgrounds-children\\_en](https://europa.eu/investeu/projects/smart-playgrounds-children_en)> accessed 7 August 2019.

<sup>31</sup> 'Financial Transparency System' (*European Commission*, 2018)

<[http://ec.europa.eu/budget/fts/index\\_en.htm](http://ec.europa.eu/budget/fts/index_en.htm)> accessed 11 August 2019; €411,045,686 has been made

has also begun a 'Playground Project' for teenagers which consists mainly of learning other Member State languages in a structured educational environment.<sup>32</sup> While learning and socialising among teenagers is important and should be encouraged, this structured, educational environment is not ideal for stress relief or leisure time. Indeed, it is far from the ideal stress-free environment required for rest, play and leisure. With limited commitments made to the promotion of play areas, and even less to the legal protection of the right to play, it is no wonder that the right is under threat.

One of the most pressing threats to the right to play is urbanisation. It is estimated that by 2050, 70 per cent of the world's population will be living in cities.<sup>33</sup> The promotion of the right to play, through the availability of youth centres, playgrounds and open areas, is of vital importance for child-development and inclusivity in an urban area. Overdevelopment of an urban area can have a serious impact on the right to play, as opportunities to play and socialise are limited. Without effective planning to protect the right to play in urban developments, Contracting States appear to be in direct violation of article 31, and article 4, of the CRC, yet no action is being taken against States.<sup>34</sup>

In society today, an increasing emphasis is placed on education, especially science, rather than the social aspect of school. Children, particularly those in secondary school, are often encouraged to study rather than play. Whilst studying and education are of paramount importance to the full growth and development of a child, so is their ability to relax and rest. Playtime is of great importance for children of all ages to reduce stress levels and frustrations that often turn into violence and bullying. A French project from 2010, '*Espace ludiques en milieu scolaire*', introduced play spaces in schools.<sup>35</sup> The school was able to purchase toys for a nominal fee and children of all ages in the school could use them in an unstructured, free play during the school day. The project was met with great success in reducing school violence, improving confidence in shy pupils and strengthening cooperation between all students.<sup>36</sup> This project, or similar initiatives, is yet to be adopted in other Contracting States or on an EU level, though with such promising results, such an initiative would be welcomed. Further, it

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available for education and community projects, investing in 1493 projects. €225,000 accounts for 0.05% of this budget.

<sup>32</sup> 'Erasmus Playground Project' (*Europa*) <[https://ec.europa.eu/programmes/erasmus-plus/projects\\_en](https://ec.europa.eu/programmes/erasmus-plus/projects_en)> accessed 10 August 2019.

<sup>33</sup> 'Human Population: Urbanisation' (*Population Reference Bureau*) <[www.prb.org/Publications/Lesson-Plans/HumanPopulation/Urbanization.aspx](http://www.prb.org/Publications/Lesson-Plans/HumanPopulation/Urbanization.aspx)> accessed 10 January 2018.

<sup>34</sup> CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 arts 4, 31.

<sup>35</sup> Ministère de l'Éducation Nationale, de la Jeunesse et de la Vie Associative, L'Agence Nationale et L'Égalité des chances et Federation Française des Industries, '*Espace Ludiques en Milieu Scolaire*' (2010).

<sup>36</sup> Ministre Education Nationale, '*Espaces ludiques en milieu scolaire*' (2014) <[http://cache.media.eduscol.education.fr/file/espaces\\_ludiques/50/7/Brochure\\_ELMS\\_elementaire\\_corrections\\_2014\\_462507.pdf](http://cache.media.eduscol.education.fr/file/espaces_ludiques/50/7/Brochure_ELMS_elementaire_corrections_2014_462507.pdf)> accessed 11 August 2019.

would effectively promote and protect article 31, thus increasing State compliance with this international treaty.

While opportunities to play may be promoted in primary school, children in secondary school are not encouraged to relax, despite immense stress being placed on them to succeed academically. Playtime is not part of the school day and the only school-time opportunity to relax is often Physical Education which takes place on average for an hour once a week. In *Osmanoglu and Kocabas*, the European Court of Human Rights considered swimming lessons to be of vital importance for the social development and integration of children into society, as a part of school play time and development.<sup>37</sup> This case is one of the few examples where an international court has considered the importance of leisure activities. The pressure placed on students at school can lead to a wide range of mental illnesses including depression, anxiety disorders and extreme self-consciousness.<sup>38</sup> Teenagers, in particular, are prone to immense pressure from teachers and parents to achieve high grades and succeed in school. The ability to study, socialise and relax is not always manageable, and often teenagers leave out any rest time to achieve the results expected of them.<sup>39</sup> This immense pressure is severely limiting their ability to realise article 31 in their day-to-day lives. What is, in fact, a right appears to be more of a privilege in their lives. When increasing opportunities for rest, play and leisure in school, a reduction in education is an obvious necessity, unless school days are made longer. The right to play should be protected by governments to the same extent as the right to education, in accordance with their international legal obligations.<sup>40</sup>

A globalised threat to article 31 is the commercialisation of play time. The use of technology is significantly increasing, and children connect through technology rather than playing outside. Children with disabilities and from poorer backgrounds are unable to keep up with this rapidly developing trend. One in eight children suffers from a mental health disorder in the UK, in Ireland this figure is one in five.<sup>41</sup> There is a causal link between materialism and dissatisfaction leading to poorer self-esteem and anxiety.<sup>42</sup> A stronger emphasis is placed on material goods and the right to play is often limited to those who possess the latest gadgets and toys. Several reports suggest that children who cannot possess similar toys or access

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<sup>37</sup> *Osmanoglu and Kocabas v Switzerland* App no. 29086/12 (ECHR, 10 January 2017).

<sup>38</sup> Michelle McBride, 'School Stress: The Emerging Issue of Anxious Schoolchildren' *Irish Times* (27 April 2017).

<sup>39</sup> Patti Neighmond, 'School Stress Takes a Toll on Health, Teens and Parents Say' *National Public Radio* (London, 2 December 2013).

<sup>40</sup> 'UN Convention on the Rights of the Child' (*International Play Association*) <<http://ipaworld.org/childs-right-to-play/uncrc-article-31/un-convention-on-the-rights-of-the-child-1/>> accessed 10 August 2019.

<sup>41</sup> National Health Service, 'Mental Health of Children and Young People in England 2017' (22 November 2018) <<https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-of-children-and-young-people-in-england/2017/2017>> accessed 7 March 2020; UNICEF, 'Report Card 14: Child Well-Being in Wealthier Nations' (2017), 20.

<sup>42</sup> Bye Buy Childhood, 'Impact Report' (2010) s 3.

computers or television feel a lack of a sense of belonging in their school lives and experience feelings of inadequacy and isolation.<sup>43</sup> As consumerism progresses, class barriers become very real and isolating, resulting in children from low-income backgrounds becoming isolated and alone. Their right to play is impeded significantly. Admittedly, consumerism can hardly be prevented by the government. However, governments can promote alternatives to high-cost play through the construction of play areas, promotion of the right to play by awareness-raising and encouraging community through youth groups.<sup>44</sup> Contracting States have legal obligations to uphold all rights under the Convention, yet it seems they are actively impeding the realisation of article 31.<sup>45</sup>

Not only are the threats facing article 31 diminishing its function and implementation, the lack of protection afforded by Contracting States to the article rights is shocking. Article 31 is not a priority for many Contracting States, despite its benefits on child mental health and physical well-being. Many Contracting States have been criticised by the UN, Council of Europe and European Commission for the limited attention paid to the right to play.<sup>46</sup> Upon ratification of the CRC, Contracting States imposed a duty upon themselves to safeguard the rights contained therein.<sup>47</sup> In failing to do so, Contracting States are in violation of their international obligations, yet little international intervention is seen. The Committee on the Rights of the Child does not actively report on article 31, nor are any sanctions available to ensure compliance.<sup>48</sup> Indeed, the protection of article 31 seems to be at the discretion of each Contracting State; as such, no real protection is afforded to it.

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<sup>43</sup> *ibid.*

<sup>44</sup> International Play Association, 'Children's Right to Play and the Environment' (2016). See also Sarah Burns, 'Late Late Toy Show is the most watched TV programme of 2018' *The Irish Times* (Dublin, 3 December 2018) in Ireland, Radio Teilifis Eireann (RTE), funded by the government, hosts a 'Late Late Toy Show' which promotes the years 'must-have toys'. This encourages the concept that toys are necessary for children to play. It is the most popular show, with millions of Irish viewers watching each year.

<sup>45</sup> Richard Adams, 'Hundreds of children's playgrounds in England close due to cuts' *The Guardian* (London, 13 April 2017); Dr Ursula Kilkelly, 'Barriers to the Realisation of Children's Rights in Ireland' (Office of the Ombudsman for Children, 2007); ECSIP consortium, 'Study on the competitiveness of the toy industry' (European Commission, 2013).

<sup>46</sup> Aoife Daly, Sandy Ruxton and Mieke Schuuman, 'Challenges to Children's Rights Today: What do children think?' (Council of Europe, 2016), an assessment of France's response to the CRC; 'Evaluation of legislation, policy and practice on child participation in the European Union: Spain' (European Commission, 2015), an evaluation of Spanish policy in the protection of children's rights, including the right to play; 'Their lives are worth more than just guns and grenades' (*Right to Play*) <[www.righttoplay.ca/en-ca/national-offices/national-office-canada/whats-new/their-lives-are-worth-more-than-just-guns-and-grenades/](http://www.righttoplay.ca/en-ca/national-offices/national-office-canada/whats-new/their-lives-are-worth-more-than-just-guns-and-grenades/)> accessed 11 August 2019, information on child soldiers in war torn areas and Right to Play's work.

<sup>47</sup> CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 4.

<sup>48</sup> In the last fifteen years the right to play was mentioned in one periodic review of France ('Concluding observations of the Committee on the Rights of the Child: France' (22 June 2009) UN Doc CRC/C/FRA/CO/4); of Germany ('Initial reports of States parties due in 1994' (30 August 1994) UN Doc CRC/C/11/ADD.5); Sweden ('Third periodic report of States parties due in 2002' (11

#### 4. Social Issues Affecting Article 31

An important aspect of human rights law is its interaction with society. Several social issues impede children's access to their rights under article 31. Bullying, and a more recent phenomenon of cyberbullying, can have a significant impact on a child's ability to rest and relax. 'Bullying' as is understood by today's society is both the physical and mental torment by one person of another.<sup>49</sup> Traditionally, bullying was seen as physical assault on the playground, but today it encompasses a wide range of physical and emotional assaults both in school, at home and at work. 'Cyberbullying' is a far more recent concept. With the growth of social media, users are subjected to offensive and personal comments attacking their looks, lives and family. Some legal initiatives have been launched in an attempt to combat cyberbullying. For example, in Ireland, the Special Rapporteur on Children called for a government initiative to criminalise cyberbullying in Ireland.<sup>50</sup> Despite this recommendation, no immediate plans have been made to criminalise cyberbullying. In the UK, the Children's Commissioner for Wales called for laws to be introduced to combat cyberbullying.<sup>51</sup> There are no laws in the UK that specifically prohibit cyberbullying, though it could be implied in the Protection from Harassment Act.<sup>52</sup> In France, an estimated 700,000 pupils are bullied each year, with many taking their lives. The French government has been heavily criticised for failing to tackle the problem effectively.<sup>53</sup> This trend is true across many other Contracting States.<sup>54</sup> Social media is a major cause for the spike in childhood anxiety.<sup>55</sup> With this obvious

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November 2002) UN Doc CRC/C/125/Add.1); Spain ('Concluding observations on the combined fifth and sixth periodic reports of Spain' (05 March 2018) UN Doc CRC/C/ESP/CO/5-6).

<sup>49</sup> 'Definition of Bullying' (*National Centre Against Bullying*) <<https://www.ncab.org.au/bullying-advice/bullying-for-parents/definition-of-bullying/>> accessed 12 August 2019; 'What is bullying?' (*Stopbullying.gov*) <[www.stopbullying.gov/what-is-bullying/index.html](http://www.stopbullying.gov/what-is-bullying/index.html)> accessed 12 August 2019; 'bully' (*Cambridge Dictionary*) <<https://dictionary.cambridge.org/dictionary/english/bully>> accessed 12 August 2019.

<sup>50</sup> Kitty Holland, 'Rapporteur calls for criminalising of cyberbullying' *Irish Times* (Dublin, 9 March 2016).

<sup>51</sup> BBC News, 'Cyberbullying Laws Needed, says children commissioner of Wales' (15 October 2013).

<sup>52</sup> Protection from Harassment Act 1997, s 1. This offence may be read to include online harassment but is far from satisfactory to combat cyberbullying.

<sup>53</sup> Lucy Williamson, 'French school bullying deaths stir intense debate' (*BBC*, 30 September 2016) <[www.bbc.com/news/world-europe-37505349](http://www.bbc.com/news/world-europe-37505349)> accessed 11 August 2019.

<sup>54</sup> Including Russia (Stephen Ennis, 'Cyberbullying: Russian girl's death prompts national debate' (*BBC*, 26 May 2016) <[www.bbc.com/news/world-europe-36379815](http://www.bbc.com/news/world-europe-36379815)> accessed 11 August 2019); Germany ('Cyberbullying: When social media become (sic) a pillory' (*Goethe Institute*, 2013) <<https://www.goethe.de/en/kul/ges/20456247.html>> accessed 11 August 2019); Norway (A Amarsson et al, 'Cyberbullying and traditional bullying among Nordic adolescents and their impact on life satisfaction' (2019) *Scandinavian Journal of Public Health*).

<sup>55</sup> Michelle McBride, 'School Stress: The Emerging Issue of Anxious Schoolchildren' (*Irish Psychiatry*, 27 March 2017) <[www.irishpsychiatry.ie/blog/school-stress-the-emerging-issue-of-anxious-schoolchildren/](http://www.irishpsychiatry.ie/blog/school-stress-the-emerging-issue-of-anxious-schoolchildren/)> accessed 11 August 2019.

detriment to the right of children to rest and leisure, surely governments should take some initiatives to combat this global phenomenon. Criminalising cyberbullying, or implementing school action plans to encourage vigilance, would be a practical solution to tackling this threat to article 31 and improve State compliance with their obligations under the CRC. Spain is the only country in the EU that has criminalised cyberbullying in their criminal code.<sup>56</sup> Statistics are not yet available as to the effect this has had on cyberbullying, nor is any case law available. It will be interesting to see the effect this law will have on cyberbullying in the coming years as the law is implemented and enforced.

School place bullying is on the rise as well, with children from poorer backgrounds often targeted. School place bullying is no longer limited to physical altercations, but can be immensely intrusive and emotionally scarring for children. Society is continuing to become more accepting of less-traditional lifestyles, however, one in four children reported bullying on grounds of race, ethnicity, gender, disability, religion or sexual orientation.<sup>57</sup> Bullying has a significant impact on a child's right to socialise and relax under article 31. Fear of physical or verbal assault in the playground or at school often causes children to stay near teachers during break times and stay at home, rather than socialise with classmates outside of school hours. Bullying also causes increased levels of stress resulting in children being afraid of school and often causing anxiety disorders.<sup>58</sup> Despite initiatives to criminalise cyberbullying, no movement has been initiated to criminalise the more traditional physical and emotional bullying in the playground, which can have equally harmful effects. While this is probably wise, should some laws be in place to protect children? Schools could be vicariously liable for bullies in civil proceedings, creating an incentive on schools to prevent bullying. The introduction of a strict liability offence on schools could also increase initiatives to prevent bullying. A strict liability offence can improve compliance and preventive measures, as was seen with the Companies Act 2014.<sup>59</sup> Of course, a due diligence defence ought to be included. The introduction of CCTV in schools may reduce bullying, though it may have an impact on rights to privacy.<sup>60</sup> Parents are also under an obligation to prevent bullying, either through intervention or vigilance. Children are often embarrassed or afraid to tell their parents about bullies, and a bully would never openly admit to their acts. As such, it is the responsibility of parents to be vigilant and observant around their children and their classmates.

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<sup>56</sup> Sam Morgan, 'Cyberbullying: A creeping phenomenon, only punished by law in Spain' (*Euractiv*, 9 November 2016) <[www.euractiv.com/section/social-europe-jobs/news/cyberbullying-a-creeping-phenomenon-only-punished-by-law-in-spain/](http://www.euractiv.com/section/social-europe-jobs/news/cyberbullying-a-creeping-phenomenon-only-punished-by-law-in-spain/)> accessed 11 August 2019.

<sup>57</sup> 'Gay Bullying Statistics' (*Bullying Statistics*) <[www.bullyingstatistics.org/content/gay-bullying-statistics.html](http://www.bullyingstatistics.org/content/gay-bullying-statistics.html)> accessed 10 August 2019.

<sup>58</sup> Douglas Vanderbilt and Marilyn Augustyn, 'The effects of bullying' (2010) *Paediatrics and Child Health* 20(7) 315, 318. See also Sherri Gordon, 'The Long-Lasting Effects of Bullying' (*Very Well Family*, 05 June 2019) <[www.verywellfamily.com/bullying-impact-4157338](http://www.verywellfamily.com/bullying-impact-4157338)> accessed 12 August 2019.

<sup>59</sup> Companies Act 2014, s 270.

<sup>60</sup> 'Use of CCTVs in Schools' (*Data Protection in Schools*) <<http://dataprotectionschools.ie/en/Data-Protection-Guidelines/CCTV/Use-of-CCTV-Systems-in-Schools/>> accessed 11 August 2016.

Another social issue arguably linked to the diminished importance on article 31 is the rise of childhood obesity. More than 2.3 million children in Britain are estimated to be overweight or obese.<sup>61</sup> Almost a third of Irish children are overweight.<sup>62</sup> Sedentary lifestyles arising from computer games, lack of outdoor play areas and dwindling sociability can be partially blamed for the increase in childhood obesity. Older children partake in limited physical exercise during their schooling, usually once a week, and have no desire to do exercise in their resting time. The rise of obesity has encouraged government involvement, including the introduction of a sugar tax on fizzy drinks.<sup>63</sup> In 2016, the Irish Department of Health issued a report on promoting a healthier Ireland, including an action plan to reduce obesity across all age groups.<sup>64</sup> Arguably, the right to play and the right to health are linked in this regard. Though these practical measures are a welcome development to protect public health, it must be noted that limited emphasis is placed on the importance of play and article 31. Encouraging compliance and taking positive measures to ensure compliance with article 31 would naturally result in lower obesity levels, yet such initiatives are not at the forefront of government plans. In France, childhood obesity has seen a downward trend in recent years. Most notably, children from higher-income families are less likely to be obese. A link was made between children of higher-income families being more active and more likely to participate in sports and outdoor activities than lower-income families.<sup>65</sup>

With the increased levels of stress on students from school, bullying and low self-esteem, with no reprieve to rest, relax or play, more and more children are suffering from anxiety disorders and depression. This can have serious consequences for children and as they grow into adulthood. Ireland has the fourth highest teen suicide rate in the European Union.<sup>66</sup> 22.6 per cent of children aged between 11 and 15 reported psychological symptoms in their lives.<sup>67</sup> Boys are three times more likely to die by suicide than girls, but girls attempt suicide twice as often as boys.<sup>68</sup> Ireland also leads in the suicide rate of 15-19 year olds in the EU in 2016.<sup>69</sup>

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<sup>61</sup> Bye Buy Childhood, 'Impact Report' (2010) s 3.

<sup>62</sup> Ciaran D'Arcy, 'Almost a third of Irish children are now overweight-Study' *Irish Times* (Dublin, 11 October 2017).

<sup>63</sup> 'Sugar Sweetened Drinks Tax' (*Revenue Commissioner*) <[www.revenue.ie/en/companies-and-charities/excise-and-licences/excise-duty-rates/sugar-sweetened-drinks-tax.aspx](http://www.revenue.ie/en/companies-and-charities/excise-and-licences/excise-duty-rates/sugar-sweetened-drinks-tax.aspx)> accessed 10 August 2019.

<sup>64</sup> Department of Health, 'A Healthy Weight for Ireland' (Dublin, 2016).

<sup>65</sup> Nicole Trian, 'French childhood obesity trends downward as global rates rise' (*France 24*, 12 February 2017) <[www.france24.com/en/20170212-french-childhood-obesity-trends-downward-global-rates-rise-france](http://www.france24.com/en/20170212-french-childhood-obesity-trends-downward-global-rates-rise-france)> accessed 11 August 2019.

<sup>66</sup> Cianan Brennan, 'Ireland's Teen Suicide Rate is the Fourth Highest in the EU' *The Journal* (Dublin, 19 June 2017).

<sup>67</sup> *ibid.*

<sup>68</sup> Paul Cullen, 'One in 10,000 Irish Teenagers will Die by Suicide, says Unicef' *The Irish Times* (Dublin, 19 June 2017).

<sup>69</sup> 10.21 per 100,000 people compared to 3.41 in Denmark, 3.37 in France, 4.27 in the UK and 4.95 in Germany. Interestingly the suicide rate of 15-19 year olds in Spain, where cyberbullying is criminalised, was 2.59 per 100,000. 'Suicide Death Rate by Age Group' (*Eurostat*, 31 July 2019)

There are a large number of factors leading to teen suicide including stress, anxiety disorders, depression and severe bullying. Cyberbullying has claimed the lives of many teenagers to such an extent that anti-cyberbullying laws are being advocated for.<sup>70</sup> With a greater emphasis placed on article 31, a more concise and specialised action plan can be created to encompass all of these issues, while focusing on the protection of fundamental rights of all children. In promoting the right to play and complying with their international obligations, Contracting States may actually reduce suicide risks and mental health problems in children.

## 5. A Government Action Plan

One way to protect and promote the right to play would be through the creation of a national action plan. University College Dublin has recently begun a national research project into the lives of school children, which may produce some interesting findings as regards this right.<sup>71</sup> The plan should consist of designated play time in schools to encourage relaxation and socialising. Though this is already provided for primary school students, secondary school students do not receive similar benefits. Instead their 'free time' is often spent studying in supervised areas. Physical exercise should be promoted in schools so that it becomes a normal part of everyday life. Perhaps schools could set aside half an hour each day for students to engage in walks, games or light exercise to encourage activity. This time would be welcomed by students as a break from study and encourage group activity. Students could be educated about the physical and mental benefits of engaging in exercise each day with emphasis placed on the importance of regular daily exercise. Admittedly, governments can only do so much to promote play and physical activities, and even the implementation of an action plan may not solve all of the issues outlined in this paper. It would, however, raise awareness amongst parents and children about the importance of the rights to play, rest and leisure, and encourage children to exercise their rights.

The plan should highlight that free time should be as unstructured and unsupervised as possible.<sup>72</sup> This may be difficult to fully implement, given the importance of supervising children to prevent harm. However, a non-intrusive presence by a teacher or staff member may be sufficient. Children should be given as much freedom as possible during break times

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<<https://ec.europa.eu/eurostat/databrowser/view/tps00202/default/table?lang=en>> accessed 11 August 2019.

<sup>70</sup> Mathew Ruedy, 'Repercussions of a MySpace Teen Suicide: Should Anti-Cyberbullying Laws Be Created?' (2008) *North Carolina Journal of Law and Technology* 9(2).

<sup>71</sup> David Kearns, 'UCD to delve into the secret lives of children navigating Irish primary school' (UCD, 1 November 2018). The study is run by UCD School of Education, University College Dublin, named 'Children's School Lives' and will track children through primary school development. The study is funded by the National Council for Curriculum and Assessment and is focused on exploring the school and community life of primary school students. The study will focus on relationships, inclusion, school culture, religion, education and emotional wellbeing in schools. This study will build on the 2006 study 'Growing up in Ireland'.

<sup>72</sup> Jon Hamilton, 'Scientists say child's play helps build a better brain' *National Public Radio* (London, 6 August 2014).

and lunch to encourage creativity and relaxation, without feeling watched or limited in their abilities to play and rest. Students should be encouraged to go to the school playing fields and equipment should be provided for games such as tennis or football that encourage team sports, exercise and a welcome relief from work. While this may be available during the set PE time, allowing children to play at will might be beneficial. Time management of children can negate the purpose of free time. Children need to relax and play on their own or with each other. Adult participation, such as an ever-watching PE teacher, can make children self-conscious and can limit their imagination and creativity. Moreover, some children may feel isolated or excluded when adults take the main focus of the activity away from them. Free time should be left for the children with appropriate monitoring for safety.

As demonstrated, bullying poses a massive threat to the meaning behind article 31 and must be tackled by school and parents. A zero-tolerance policy should be included in an action plan, meaning the full implementation of nationwide rules to combat bullying, without exception or discretion. article 31 promotes community and relations amongst children; bullying attacks that central purpose. Criminalising bullying, however, would not be of much benefit to either child involved in the harassment.<sup>73</sup> By contrast, a strict liability offence on the school, or vicarious liability in civil proceedings, would encourage schools to implement preventative measures and protection of children from school place bullying. In fact, a strict liability offence, including a due diligence defence, has been proven to encourage compliance with the law and the introduction of preventive measures to ensure the protection of law.<sup>74</sup> Such a policy should be introduced in the protection of children.

State investment in article 31 is the only way for its full realisation. Schools should be encouraged and subsidised to create adequate playgrounds and play facilities to promote leisure and playtime. Playgrounds should be abundant in urban areas, especially as urbanisation continues to spread. These playgrounds and play areas must include facilities for children with disabilities to encourage inclusion. The use of school time to promote leisure is of great significance in children's lives. State finances in creating open areas, youth centres, playgrounds and other recreational facilities would ensure the promotion and protection of article 31. Contracting State investment in and acknowledgement of the right to play could significantly improve the lives of children globally.

A condition vital to the success of any action plan is enforcement. Sanctions for violations of article 31 should be imposed at national, European and international level to ensure its full

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<sup>73</sup> Patricia Hawley and Anne Williford, 'Articulating the theory of bullying intervention programs; Views from social psychology, social work and organizational science' (2015) *Journal of Applied Developmental Psychology* 37, 3. In this paper, the authors argue that criminalising bullying is an extreme response to a complex issue. Indeed, they suggest that criminalising bullying may actually cause harm to the school climate and there is little evidence to suggest that it has a desirable outcome. See also Rivara F and LeMenestrel S (eds), *Preventing Bullying through science, policy and practice* (National Academic Press, 2016).

<sup>74</sup> Standing Committee on Legal Affairs, 'Strict and Absolute Liability Offences' (2008).

implementation and directive. At an international level, economic sanctions are traditionally the best way to encourage Contracting State enforcement and implementation. At national level, however, what is the best way to ensure compliance and enforcement? To begin with, greater awareness and encouragement should be considered. Article 31 is largely unknown by ordinary citizens and possibly State institutions and schools. As such, an awareness campaign should be launched accompanying the action plan. Possible sanctions could include civil proceedings on the part of the child affected, public interest cases and administrative proceedings against the Department of Education in school cases and against the Department of Child and Youth Affairs for a more generalised issue, such as lack of access to playgrounds, adequate play facilities in local areas and concerns for safety. It is important to note that each State has a legal responsibility to implement the CRC. Those that do not give direct effect to the treaty, such as Ireland, require domestic legislation that provides appropriate protections to the rights enshrined in the CRC, and appropriate avenues for legal action for those whose rights have been breached. Failure to do so can result in complaints to the High Commissioner who, in turn, can issue recommendations to the State.

This action plan could be universally adopted to improve the promotion and protection of the rights to rest, play and leisure. It may require investment by the State but could tackle numerous social issues that cost the State money every year (such as illnesses related to childhood obesity). While each State may have different weaknesses in relation to article 31, all States could benefit from a structured, comprehensive action plan for the promotion and protection of article 31.

## Conclusion

Article 31 is of great importance to the growth and development of children. A child's right to play ensures a healthy mindset and an ability to relax and have fun, even in times of great stress. In areas of crisis due to war and displacement, the ability of children to interact with each other and play can have significant benefits to their mental health during such a stressful time in their lives. Moreover, a child who is constantly under pressure from school, teachers, parents and classmates, can suffer severe mental health problems; an inability to step away from this can result in life-long consequences. Thus, placing an emphasis on article 31 can improve the lives of children, as encouragement to relax and unwind is so important for mental health and well-being. For example, the continuous pressure of school and busy lives led by children can become daunting and overwhelming. Children are young and impressionable, and they often look to adults for guidance and acceptance. As such, being acknowledged only through good grades or competitive sports can have a detrimental effect on a child's perspective on life. Though education is, of course, extremely important and adequate attention should be given to it, equal attention should be afforded to the rights to rest, play and leisure.

Article 31 rights are perhaps some of the most important rights in the Convention on the Rights of the Child, despite them being universally overlooked by Contracting States. There is a lack of international importance placed on these rights, to promote and protect the right to play, a fundamental right of childhood. In fact, its promotion and protection could reduce a number of significant risks to young persons' health and well-being. A national action plan ought to be encouraged in all Contracting States to protect article 31 through the elimination of bullying, cyberbullying, promotion of exercise and play facilities, and improvement of safety in schools and on the streets. Such an action plan could potentially tackle many social problems associated with article 31. Promotion of the child's right to play and provisions for play in schools and residential areas could help fight the rising levels of childhood obesity. The provision of free time in schools for students to either play or rest could help reduce the number of students suffering from anxiety and psychological issues that develop in childhood. This protection of article 31 could have a positive impact on the psychological development of children. Introducing measures to reduce instances of bullying could also have a positive impact on the child's psyche. These measures are manageable and practical and would not only protect children's rights under article 31 but address the most pressing social issues for children in today's society. No adequate protection is afforded to these fundamental rights of children in law or policy, despite States' legal commitment to uphold the Convention on the Rights of the Child.<sup>75</sup> Until this commitment is realised, these rights are likely to go unprotected and underappreciated indefinitely.

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<sup>75</sup> CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 4.