



# Convención de los derechos del niño

Enfoque basado en derechos: sistemas de salud- práctica clínica- diseño de políticas- formación profesional- investigación



## The U.N. Convention on the Rights of the Child: Relevance and Application to Pediatric Clinical Bioethics

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- ▶ **Critical socio economic rights**
  - ▶ health, education, adequate standard of living
- ▶ **Civil and political rights**
  - ▶ identity, expression, association, and conscience.
- ▶ **Obligations of states to protect children's rights** to be free from abuse, neglect, and all forms of exploitation.
  - ▶ These obligations specify protections for particularly vulnerable groups of children, including children with disabilities, in detention, and conscripted as soldiers.



# DERECHO A LA SALUD ÓPTIMA

## 41 artículos

- ▶ Guide the community and hospital-based practice of child health professionals to ensure they are consistent with respect for human rights
- ▶ Advance the relevance of pediatrics and child health practice, and contribute to optimal health outcomes
- ▶ Inform the design, provision and delivery of health systems to ensure compliance with the protection and fulfillment of children's rights.
- ▶ Address the social and environmental determinants of health
- ▶ Generate public- and private-sector health policies that optimize children's health and well-being by fulfilling their rights.



# NO DISCRIMINACIÓN

- ▶ **Direct discrimination** takes place when an action, activity, law, or policy deliberately seeks to exclude a particular group of children.
  - ▶ children with disabilities being denied the right to certain forms of treatment on the grounds of a perceived lower quality of life
  - ▶ access to health care being routinely limited by families' ability to pay for services.
  - ▶ family planning and reproductive services for youth being limited by public policy
  - ▶ (barring girls from providing independent consent to human papilloma virus (HPV) vaccine
  - ▶ lesbian, gay, bisexual, and transgender youth lacking access to services critical to their health.



# NO DISCRIMINACIÓN

- ▶ **Indirect discrimination** arises when an action, law, or policy has the consequence of excluding or harming particular groups of children, even if that was not the intention-
  - ▶ laws that allow unregulated development and environmental decay.
  - ▶ global trade policies that can impact children's health.
    - ▶ hospitals that hold clinics in inaccessible buildings, which may discriminate against children with disabilities
    - ▶ Fail to advertise or provide services in the languages used by immigrant or indigenous children
    - ▶ Fail to diminish severe forms of physical punishment or from female genital mutilation for cultural reasons.
    - ▶ Racism



# NO DISCRIMINACIÓN

- ▶ Reluctance to intervene in cases of extreme and widespread sexual exploitation when the perpetrators are from an ethnic minority community.
- ▶ Discrimination can also arise in health systems and public and private sector policies.
  - ▶ Targeted investments and strategies to reach the most marginalized children are also required

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# Best Interests of the Child

- ▶ Article 9 (children should never be separated from parents unless this is in their best interests)
- ▶ Article 21 (any placement for adoption must ensure that the best interests of the child are the paramount consideration)
- ▶ Article 37 (children should only be placed with adults in custody if it is in the child's best interests to do so)
- ▶ Article 40 (parents must be present in penal proceedings unless it is not in the best interests of the child).



# Best Interests of the Child

- ▶ The well-being of children is determined by a wide range of circumstances, such as age, level of maturity, role of the family, and social and cultural norms and expectations, as well as the child's individual history and experiences.
- ▶ sometimes the best interests of an individual child may conflict with that of a wider group of children
- ▶ design of clinical services and priorities for research, and in the accommodation of children's different cultural and religious identities.
- ▶ At the policy level, for example, the best interests principle should inform decisions related to vaccine policies such that children can independently consent for immunizations and should facilitate access to sexual and reproductive health services





# Best Interests of the Child

- ▶ Article 6. Right to Life and Optimum Development
- ▶ “ensure the child’s survival in order to realise the full development of his or her personality from the material and spiritual points of view”
- ▶ Article 29 emphasizes that the aim of education must be directed to achieve the overall development of the child to the child’s fullest potential
- ▶ Article 27 asserts the right of every child to a standard of living adequate for his or her overall development.
- ▶ protect a child’s right to life might be perceived to conflict with the child’s best interests in the context of sustaining the lives of extremely premature babies or intervening to prolong the life of a child with profound disabilities.



# Best Interests of the Child

- ▶ Issues such as the child's right to freedom from inhuman or degrading treatment (Article 37)
- ▶ and to all forms of exploitation (Article 36)
- ▶ In all decisions made by health professionals, the child's wishes, when he or she is capable of expressing them, must be considered (Article 12).
- ▶ children in hospitals should be enabled to pursue their right to play (Article 31), education (Article 28), and family life (Article 9)
- ▶ decisions about whether early assessment and identification services are funded and available to all children and their parents
- ▶ whether breast-feeding is supported and promoted

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# The Right to Be Heard

- ▶ Participation: Article 12 of the CRC recognizes that every child capable of forming a view is entitled to express that view and have it taken seriously in accordance with her or his age and maturity.
- ▶ Medical treatment, court orders, or the choice of a school, and those affecting children as a group, such as schooling, transport, budget expenditures, urban planning, poverty reduction, or social protection.
- ▶ provided information (Article 17), and are given time to ask questions, reflect on choices, and be involved in decisions (Article 13)—in the context of their evolving capacities (Article 5)



# Article 24: The Child's Right to Health and Health Services

- ▶ the right to the "highest attainable standard of health"
- ▶ access to health care services;
- ▶ priorities for health care services
- ▶ "abolishing traditional practices prejudicial to the health of children";
- ▶ international collaboration, in particular in developing countries
- ▶ Metrics infant and child mortality, access to primary health care, decrease in malnutrition, and access to pre- and postnatal care and chronic disease services.



# The Child's Right to Health and Health Services

- ▶ “Inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services
- ▶ Child's right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants”
- ▶ Other rights in the CRC that relate to contemporary morbidities affecting the global health of children, including parental guidance and the child's evolving capacities (Article 5)
- ▶ Access to appropriate information and role of the media (Article 17)
- ▶ Parental responsibilities and state assistance (Article 18)
- ▶ Protection from all forms of violence (Article 19)



# The Child's Right to Health and Health Services

- ▶ Rights of children with disabilities (Article 23)
- ▶ The right to periodic review of treatment (Article 25);
- ▶ The right to an adequate standard of living (Article 27);
- ▶ The right to education (Article 28);
- ▶ Protection from various forms of exploitation (Articles 32 to 36);
- ▶ Recovery and reintegration for child victims (Article 39).



# Parents' Rights in the CRC

- ▶ “family is the fundamental group of society and children should grow up in a family environment in an atmosphere of happiness, love and understanding.”
- ▶ role of parents as rights-holders and their responsibilities as duty-bearers to provide guidance to their children in the exercise of their rights under the CRC (Article 5).
- ▶ Article 7, which covers the child’s right to know and be cared for by his or her parents;
- ▶ Article 8, which covers the right to family relations without unlawful interference
- ▶ Article 9, which urges non-separation of children from parents unless in their best interests;



# Parents' Rights in the CRC

- ▶ Article 10, which explains obligations to address family reunification in a humane manner
- ▶ Article 14, which expresses the rights and duties of parents to provide guidance in exercise of freedom of thought, religion, and conscience;
- ▶ Article 16, which urges non-interference with privacy or family
- ▶ Article 29, which explains that education must include development of respect for children's parents. In addition,
- ▶ Article 18 reinforces the responsibility of parents in raising children, and the duty of the States Parties to support parents to do so as follows:





## Why might pediatric bioethicists in the United States reject the U.N. Convention on the Rights of the Child (CRC) as a framework for resolving ethical issues?

Brosco J *Perspectives in Biology and Medicine*, 2016; 58 (3): 355-364.

- ▶ Bioética clínica surge en USA en década 60 y se aplica diariamente como parte de la medicina moderna.
- ▶ Derechos del niño considerado un enfoque más de políticas públicas de salud y dependiente de determinantes sociales.
  - ▶ Las políticas de salud pública de USA, cambiaron desde un enfoque más comunitario a comienzos siglo XX, por razones demográficas reforzadas por ideología y preocupación por la inmigración.



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- ▶ Jacksonville, Florida, in February 2014: Conference
- ▶ Bioethicists largely rejected the notion that the CRC (or any other set of child rights) is a useful framework for answering ethically difficult questions in the clinical or research context.
- ▶ The specific articles of the CRC are consistent with U.S. law and tradition
- ▶ The importance of families in clinical decision-making.
- ▶ CRC are more often viewed as the province of social workers, economists, sociologists, and “health services researchers” than medical bioethicists



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- ▶ Ratifying the CRC is unlikely to improve health outcomes of children in the United States
- ▶ Difference between Child Rights and Clinical Bioethics are not based on differing views of the importance of children or their “rights.”
- ▶ History of Medicine.
- ▶ Today, the U.S. health-care system focuses extraordinary resources on the sickest patients, with little incentive for promoting health or preventing disease. Medical education.



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- ▶ Although most physicians and other health professionals standing next to you would acknowledge the impact of social determinants of health, they would maintain that their professional responsibility is to the patient at the bedside.
- ▶ Organized medicine in the United States approached ethical issues by insisting that the professionalism of individuals was sufficient to protect patients and distribute resources
- ▶ The CRC was created, on the other hand, to codify international agreement on how children should be protected and nurtured as they grow into adulthood



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- ▶ The United States spends more on health care per capita than any other nation, yet population health metrics for children and adults are typically well below those of other industrialized nations.
- ▶ From a historian's point of view, is that ratifying the CRC is unlikely to address the more fundamental issues leading to relatively poor health of U.S. children.
- ▶ Today, most European nations provide a host of government services to all mothers and children as part of national plans to ensure child health
- ▶ The underlying difference in demographics contributed greatly to the differences between Europe and the United States



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- Child health was primarily viewed as a private responsibility, with a limited role for local, state, and federal government.
- This public-private split regarding child well-being persists today
- CRC erred when they prioritized children over their families
- Similar attempts to “protect” children, state child welfare systems too often removed children from their mothers and placed them in inadequate foster homes
- Respectful and intelligent disagreement can produce deeper understanding than easy compromise



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- ▶ The gross disparities in child health in the United States stem from persistent social and economic inequity and from a health-care system that is ill-designed to address the social determinants of illness and health.
- ▶ the nation's health-care system is slowly beginning to use population health science in an outcome-based approach that rewards health promotion, disease prevention, and positive results from treatment of acute and chronic health conditions.
- ▶ Economic forces may lead to reductions in health disparities in a way that the language of child rights cannot.