

# 1. | CHILDREN'S RIGHTS UNDER FIRE

Challenging the False Conflict Between  
Children's Rights and Parental Rights



RIGHTS UNDER ATTACK SERIES PUBLICATIONS



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## Summary

*Anti-rights actors advance the claim that the autonomous rights of the child are an invention of treaty bodies that displaces the natural authority of parents and the moral order of the family. On this account, a child's rights to be heard, to privacy, to health information, and to evolving self-determination are recast as external impositions that sever children from parental protection. That claim distorts the settled architecture of children's rights law. The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child do not oppose the child to the parent. They locate the child as an independent holder of rights whose capacity for autonomous decision-making grows with age and maturity, and they cast parental authority as a responsibility exercised in the best interests of that rights-holder rather than as dominion over the child. This analysis sets out the legal content of the child's autonomous rights across the international, regional and domestic levels, identifies the institutions that give those rights interpretive and enforcement weight, and names the doctrinal strategies through which the rights are being narrowed and hollowed out. It then supplies the counter-arguments practitioners need in litigation, treaty-body engagement and legislative advocacy. Four distortions are evident: the denial of the legal status of authoritative interpretation, the redefinition of core concepts such as best interests and evolving capacities, the moralisation of children's rights through protective and pseudo-scientific framing, and the capture of the institutions that develop and enforce those rights.*

## 1. Introduction: the right and the present moment

Over four decades, the law of children's rights has moved from a welfare model, in which the child figures as a passive object of adult protection, to a rights model, in which the child is a legal subject with participatory and decision-making rights alongside the right to protection. The child is now understood as a beneficiary of care and as a bearer of dignity, privacy and a widening sphere of autonomy. That settlement is not contested at the level of black-letter text, which enjoys near-universal ratification. It is contested at the level of interpretation, where the meaning and reach of the child's autonomous rights are being pulled back through doctrinal reworking and reshaped enforcement.

The present moment is defined by an anti-rights mobilisation that frames the autonomous rights of the child as a threat to parental authority and to the family as a moral institution. The mobilisation converges religious-conservative networks, ultra-conservative civil society organisations and sympathetic political actors, and it operates through law: legislative initiatives that vest parents with something close to absolute authority over the child; strategic litigation that invokes constitutional parental rights to place children beyond the reach of state protective frameworks; and treaty-level interventions that contest the interpretive authority of treaty bodies and special mechanisms. What began as opposition to discrete entitlements has become an argument about the interpretive foundations of the human rights system as such.

This paper examines how the content of the child's autonomous rights is doctrinally reinterpreted, narrowed and emptied, and it equips legal practitioners, litigators and judicial actors with the analytical tools to identify, name and answer those strategies in courtrooms, before treaty bodies, and in legislative advocacy. Its organising premise is that a parent's duty to guide and care for a child and the child's standing as an independent rights-holder are not rivals and the perceived conflict between them is manufactured. The paper clarifies that modern international and regional human rights have moved from the common-law concept of "parental rights" in favour of parental duties, guidance and responsibilities.

## 2. The content and scope of the right

### 2.1 Legal basis

The principal international instrument is the Convention on the Rights of the Child (CRC), which frames parental guidance as progressively yielding to the child's growing capacity for independent decision-making.<sup>1</sup> Article 3 makes the best interests of the child a primary consideration in all actions concerning children. Article 5 recognises the responsibility of parents and guardians to provide direction and guidance in a manner consistent with the evolving capacities of the child. Article 12 guarantees the child the right to express views freely in all matters affecting the child and to have those views given due weight according to age and maturity. Articles 13 and 14 protect freedom of expression and freedom of thought, conscience and religion; Article

<sup>1</sup> United Nations Convention on the Rights of the Child (1989), 1577 UNTS 3 (entered into force 2 September 1990).

16 protects privacy; Article 19 obliges states to protect the child from all forms of physical and mental violence, including at the hands of parents and legal guardians; and Article 24 guarantees the highest attainable standard of health. At the regional level the African Charter on the Rights and Welfare of the Child (ACRWC) sets out standards that reinforce and, in places, sharpen those of the CRC.<sup>2</sup> Article 3 guarantees equality and non-discrimination; Article 4 makes the best interests of the child the primary consideration in all actions concerning the child. This is a distinct textual difference from Article 3 of the UN CRC, which considers the best interests of the child “a primary” and not “the primary” consideration. This makes the African regional standard higher and more protective against parental vetoes than the international baseline.

Further, Article 7 guarantees every child capable of communicating a view the freedom to express it; Article 9 protects freedom of thought, conscience and religion, with parents and guardians owing a duty of guidance calibrated to the evolving capacities of the child; Article 10 protects privacy; and Article 19 recognises the child’s right to parental care and protection. The Maputo Protocol supplies a further African anchor for the health dimension of adolescent autonomy, guaranteeing the right to health, including reproductive health, and to control over one’s fertility.<sup>3</sup> Read together, these instruments treat the African child as a subject of enforceable rights rather than as the property of adult decision-makers.

Anti-rights actors routinely weaponise Article 31 of the ACRWC, which outlines the responsibilities of the child, including to respect his parents, superiors and elders. The Interpretation advanced is that the African Charter establishes parental supremacy. That is far from the truth. The child’s duty to respect elders does not mean that adult caregivers have unquestionable authority over children.<sup>4</sup> Rather, the duty is conditioned on age and maturity. The African Committee of Experts on the Rights and Welfare of the Child states that Article 31 is a manual for training children to become responsible individuals and, eventually, adults in society.<sup>5</sup> Additionally, Article 31 duties cannot be interpreted to extinguish, limit or subordinate the fundamental rights guaranteed to the child under Articles 1 through 30. The placement of the duty following all other substantive rights is instructive of this position. The Committee explains that ‘The careful and deliberate placement of the provisions of article 31 in the Charter gives a clear indication of what the priority is and where the emphasis lies. The Charter begins by first spelling out a very detailed and comprehensive list of rights for children, without limiting them in anyway, and thereafter places responsibilities at the end of Part I, the section of the Charter that deals with rights.’<sup>6</sup> The provision must therefore be read in conjunction with their other Charter rights, including freedom of expression and participation;<sup>7</sup> and with the understanding that parents hold fiduciary responsibilities rather than proprietary rights over the child.

<sup>2</sup> African Charter on the Rights and Welfare of the Child (1990), OAU Doc CAB/LEG/24.9/49 (entered into force 29 November 1999).

<sup>3</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003), art 14.

<sup>4</sup> Julia Sloth-Nielsen and Rachel Sloth-Nielsen, Responsibilities of the Child, in the African Charter on the Rights and Welfare of the Child: A Commentary, p. 459, accessed from <https://ora.ox.ac.uk/objects/uuid:67a4d7a3-bd9d-4b3d-b035-7ade7665e0a8/files/sf-1881n84h>

<sup>5</sup> Concluding Observations and recommendations by the African Children’s Committee on the Republic of Ghana’s initial report on the status of implementation of the African Children’s Charter (December 2016), Para 40

<sup>6</sup> African Children’s Committee General Comment on article 31 of the African Children’s Charter on ‘The responsibilities of the child’ (2017) para 13

<sup>7</sup> Supra n.4, page 460

Domestic constitutions frequently incorporate and reinforce these standards. Article 53 of the Constitution of Kenya 2010 guarantees the child a name and nationality, education, protection from violence, parental care, and freedom from detention, and Article 53(2) makes the best interests of the child of paramount importance in every matter concerning the child.<sup>8</sup> The same paramountcy formula appears in section 28(2) of the Constitution of South Africa 1996, section 81(2) of the Constitution of Zimbabwe 2013, and section 23 of the Constitution of Malawi 1994.<sup>9</sup> Constitutional design differs, but the best-interests principle has hardened into a shared constitutional standard: the child is no longer a subject of unbounded parental power but a rights-holder owed protection and an expanding space in which to exercise agency. Parental authority, on this settled view, is a trust to be exercised in the best interests of the child.

## 2.2 Normative development of the right

### Interpretive instruments

The scope of the child's autonomy has been given substance by the General Comments of the Committee on the Rights of the Child. General Comment No 12 interprets Article 12 and holds that the child's views must be given weight according to age and maturity, that participation is both a substantive and a procedural right, and that Article 12 sets no minimum age on the right to be heard.<sup>10</sup> It reads Article 12 together with Article 5, so that as the child's capacities grow, parental direction converts from command into advice and reminder, tracking the child's increasing responsibility for matters that affect the child.<sup>11</sup> On health, the Committee holds that states should ensure children can obtain confidential medical counselling and advice without parental consent, irrespective of age, where this serves the child's safety or well-being, including in matters of reproductive health.<sup>12</sup>

General Comment No 14 interprets Article 3 and establishes that best interests operates at once as a substantive right, an interpretive principle and a rule of procedure: the child's interests must be assessed and weighed when competing interests are in play; where a provision admits of more than one reading, the reading that best serves the child's interests governs; and any decision affecting a child must be preceded by an assessment of its impact on the child.<sup>13</sup> The General Comment ties best interests to Article 12: an assessment that ignores the child's own expressed views is defective, and the weight of those views rises with the child's maturity.<sup>14</sup>

General Comment No 15 on the right to health directs that adolescents be able to reach

<sup>8</sup> Constitution of Kenya 2010, art 53(2).

<sup>9</sup> Constitution of the Republic of South Africa 1996, s 28(2); Constitution of Zimbabwe 2013, s 81(2); Constitution of the Republic of Malawi 1994, s 23.

<sup>10</sup> Committee on the Rights of the Child, General Comment No 12 (2009): The Right of the Child to Be Heard, UN Doc CRC/C/GC/12, para 21.

<sup>11</sup> Ibid, paras 84–85.

<sup>12</sup> Ibid, para 101.

<sup>13</sup> Committee on the Rights of the Child, General Comment No 14 (2013): The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, UN Doc CRC/C/GC/14, paras 6–14.

<sup>14</sup> Ibid, paras 43–44.

independent decisions on health as their capacities evolve, with rights-based guidance on consent, assent and confidentiality, and that they not be deprived of sexual and reproductive health services through providers' conscientious objection.<sup>15</sup> General Comment No 20 on adolescence treats that period as one of expanding agency and holds that adolescents should have access to confidential, non-discriminatory sexual and reproductive health services, information and education, in and out of school.<sup>16</sup>

## Interpretive principles

Three principles are central to the field. The doctrine of evolving capacities, drawn from Article 5, holds that a child's ability to exercise rights develops with age and maturity, so that parental direction contracts as the child's competence expands. Closely linked is the mature-minor principle associated with *Gillick*, under which a minor who has sufficient understanding may consent to treatment without parental agreement.<sup>17</sup> That principle has practical significance in adolescent health, where access often turns on confidential decision-making in circumstances of sexual activity, pregnancy or risk of HIV.<sup>18</sup> The best-interests principle, drawn from Article 3, calls for an individualised assessment of the child's circumstances and rejects blanket determinations founded on parental authority, age or social convention. Together the three connect the child's autonomy to broader principles of dignity, equality, agency and participation.

## 2.3 Core components

The child's autonomous rights are interdependent with the rights to equality and non-discrimination, to life and development, to protection from violence and exploitation, and to education. Erosion in one cascade into the others, and the burden falls hardest on children already made vulnerable. Substantively, the rights comprise the child's recognition as an independent rights-holder, access to information, access to health care without a mandatory parental veto once sufficient maturity is shown, the right to an identity, and the right to protection from harm. Procedurally, they comprise the right to be heard, access to legal representation or a guardian ad litem in judicial proceedings, confidentiality in health and social-service settings, effective remedies for violations, and child-sensitive procedures before courts and administrative bodies.

<sup>15</sup> Committee on the Rights of the Child, General Comment No 15 (2013): The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art 24), UN Doc CRC/C/GC/15, paras 21, 69.

<sup>16</sup> Committee on the Rights of the Child, General Comment No 20 (2016): The Implementation of the Rights of the Child During Adolescence, UN Doc CRC/C/GC/20, paras 59–61.

<sup>17</sup> *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 (HL).

<sup>18</sup> United Nations Development Programme, Rights of Children and Young People to Access HIV-related Services (Global Commission on HIV and the Law, 2011).

## 2.4 State obligations

The obligations of states run along the familiar tripartite structure. The duty to respect calls on states to refrain from unjustified interference with the child's autonomy, participation and privacy. The duty to protect calls on them to prevent violations by third parties, including within the family and in institutional settings. The duty to fulfil calls on them to build the legal and institutional machinery through which children can exercise their rights in practice, including access to justice, child-friendly procedure and participation mechanisms. General Comment No 5 anchors this structure, holding that implementation of the Convention demands legislative, administrative and institutional measures, together with remedies and accountability mechanisms.<sup>19</sup>

## 3. The institutional architecture of protection

### 3.1 Treaty bodies

Within the United Nations system, the Committee on the Rights of the Child is the central interpretive authority.<sup>20</sup> It develops the content of participation, best interests and evolving capacities through General Comments; it reviews periodic state reports and issues concluding observations that name gaps and recommend measures; and, under the Optional Protocol on a Communications Procedure, it receives individual and inter-state communications. The Committee's interpretive authority is contested by states and actors pursuing restrictive agendas, who cast its outputs as the overreach of unelected experts. That characterisation understates their standing. General Comments are authoritative interpretations of treaty provisions the state has ratified, made in good faith and in light of the treaty's object and purpose under Article 31 of the Vienna Convention on the Law of Treaties, and they are entitled to be given weight accordingly. They do not create new obligations; they render existing ones legible.

### 3.2 Regional bodies

The African Committee of Experts on the Rights and Welfare of the Child promotes and protects the rights in the ACRWC, monitors implementation and interprets its provisions, and it has strengthened, through its communications and interpretive outputs, the understanding of children as independent holders of participatory and protective rights.<sup>21</sup> In its General Comment No. 5 on Article 1 of the ACRWC on State Party Obligations and Systems Strengthening for Child Protection, the Committee defines the best interests standard to apply as an extremely important consideration when ranked against any other competing considerations.<sup>22</sup> The Committee

<sup>19</sup> Committee on the Rights of the Child, General Comment No 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child, UN Doc CRC/GC/2003/5.

<sup>20</sup> Convention on the Rights of the Child, art 43 (Committee); art 44 (reporting); Optional Protocol on a Communications Procedure (2011).

<sup>21</sup> African Charter on the Rights and Welfare of the Child, Article 42 (mandate of the Committee of Experts); Article 43 (state reporting).

<sup>22</sup> African Committee of Experts on the Rights and Welfare of the Child General Comment No. 5 on Article 1 of ACRWC on State Party

recognises the child as an active participant in the protection, promotion and monitoring of their rights, and respect for the views of the child should be enshrined in all national legislation.<sup>23</sup> Regarding access to reproductive health services, key aspects of child participation, including the age of consent to treatment or surgery, need to be laid down in law.<sup>24</sup> In its joint General Comment No. 3 with the African Commission on Ending Child Marriage, the Committee interprets the state obligation to put in place institutional measures to ensure access to and uptake to health services. The General Comment draws from the African Commission General Comment No. 1 on Article 14 of the Maputo Protocol,<sup>25</sup> explaining that ‘third-party permission for accessing sexual and reproductive health services should not be required’.<sup>26</sup>

In the Nubian Children communication, the Committee held that Kenya had violated the Charter by denying children of Nubian descent access to nationality and associated rights, and it grounded the ruling in best interests and in the standing of children as independent rights-holders entitled to the full enjoyment of Charter protections.<sup>27</sup> In the communication brought by the Centre for Human Rights and RADDHO against Senegal, concerning the Qur’anic-school *talibés*, the Committee reaffirmed that children are rights-holders and that decisions affecting them must be governed by participation and best interests.<sup>28</sup>

Comparative regional authority points the same way. The European Court of Human Rights, interpreting the right to respect for private and family life, has held that a child who is not adequately involved in proceedings that determine the child’s living arrangements is denied a right that belongs to the child and not only to the parents.<sup>29</sup> The Inter-American Court, in its advisory opinion on the juridical condition of the child, put the principle in its plainest form: children are subjects of rights and not merely objects of protection, and limits on legal capacity do not extinguish the capacity to hold rights.<sup>30</sup>

### 3.3 Domestic apex courts

Domestic courts both operationalise and contest the child’s autonomy. The foundational authority is *Gillick*, in which the House of Lords held that a child under sixteen may consent to medical treatment where the child has sufficient understanding and intelligence to grasp what is proposed, marking the shift from fixed parental authority to a capacity-based model. The reach of that principle has itself become a site of litigation. In *Bell v Tavistock*, claimants

Obligations and Systems Strengthening for Child Protection, Page 11

<sup>23</sup> Ibid., Page 13. See Also African Committee of Experts on the Rights and Welfare of the Child General Comment on Article 22 of the African Charter on the Rights and Welfare of the Child: Children in Situations of Conflict, Paras. 31- 32

<sup>24</sup> Ibid., Page 29

<sup>25</sup> African Commission General Comment no 1 on Article 14 of the Maputo Protocol, paragraph 29

<sup>26</sup> Joint General Comment of the African Commission on Human and People’s Rights (ACHPR) Para 35

<sup>27</sup> Institute for Human Rights and Development in Africa and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v Kenya, Communication No 002/Com/002/2009 (ACERWC).

<sup>28</sup> *Centre for Human Rights (University of Pretoria) and Renc ntre Africaine pour la Défense des Droits de l’Homme v Senegal*, Communication No 003/Com/001/2012 (ACERWC).

<sup>29</sup> *M and M v Croatia*, App No 10161/13 (ECtHR, 3 September 2015).

<sup>30</sup> Inter-American Court of Human Rights, Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02 (28 August 2002).

sought a declaration that minors could not in law give valid consent to puberty-suppressing treatment; the Divisional Court granted guidance that would have made court authorisation the practical norm, but the Court of Appeal reversed, holding that it is for clinicians, not courts, to assess whether a given child is competent to consent, and that the lower court's guidance was an improper restriction on the Gillick test.<sup>31</sup> The best-interests principle can still qualify a mature minor's wishes. In *A.C. v Manitoba*, concerning a fourteen-year-old who refused a blood transfusion on religious grounds, the Supreme Court of Canada read the governing statute's best-interests standard as a sliding scale, under which the weight given to an adolescent's views rises with demonstrated maturity, so that autonomy and protection are reconciled rather than set against each other.<sup>32</sup>

### 3.4 Soft law

A layer of soft law contextualises and operationalises treaty obligation: the Sustainable Development Goals on universal access to sexual and reproductive health and on inclusive quality education, the Nairobi Statement on ICPD25, and World Health Organisation guidance on adolescent health. Anti-rights actors routinely dismiss these instruments as non-binding and therefore ignorable. This approach mischaracterises the function of soft law, which does not bind of its own force but supplies the interpretive content through which binding obligations are applied.

### 3.5 Methods of interpretation

The Vienna Convention on the Law of Treaties governs treaty interpretation.<sup>33</sup> Three methods carry added weight in the human rights context: evolutive interpretation, which reads human rights treaties as living instruments to be understood in light of present conditions; purposive interpretation, which reads provisions to achieve their object and purpose; and systemic integration, which reads a provision consistently with the wider body of international human rights law.<sup>34</sup> Anti-rights strategies lean on strict textual or original-intent readings to resist the evolutive and purposive methods. The contest between these methods is the terrain on which the child's autonomous rights are fought over.

<sup>31</sup> *Bell v Tavistock and Portman NHS Foundation Trust* [2021] EWCA Civ 1363, reversing *R (Bell) v Tavistock and Portman NHS Foundation Trust* [2020] EWHC 3274 (Admin).

<sup>32</sup> *A.C. v Manitoba* (Director of Child and Family Services), 2009 SCC 30.

<sup>33</sup> Vienna Convention on the Law of Treaties (1969), arts 31–33.

<sup>34</sup> O Ammann, 'The Interpretative Methods of International Law: What Are They, and Why Use Them?' (2019).

## 4. Typology of distortion: how the right is being attacked

### 4.1 Denial of normative status

**The distortion:** This strategy attacks the authority of interpretive instruments, chiefly General Comments and concluding observations, casting them as non-binding guidance incapable of generating obligation beyond the bare treaty text, and it then reframes the child's autonomous rights as ideological constructs unmoored from that text. The argument runs on three tracks: that General Comments are not law and may be disregarded; that treaty bodies exceed their mandate by elaborating rights not spelled out in the treaty; and that unelected experts should not displace democratically enacted domestic law. The campaign against United States ratification of the CRC illustrates the move, portraying the Committee as an unaccountable body that pressures states to rewrite their laws.<sup>35</sup>

**Element displaced:** The strategy removes the interpretive infrastructure without which the treaty's autonomy provisions are legally indeterminate. Stripped of authoritative elaboration, Article 5 and Article 12 collapse into aspiration, and aspiration is readily overridden by domestic parental-rights legislation.

### 4.2 Redefinition of key concepts

**The distortion:** This strategy narrows, fragments or re-reads the defining concepts of the field best interests, participation, evolving capacities to shift the law from a model of functional, graduated autonomy to one of presumptive incapacity. Best interests is redefined as an objective standard fixed by parents or by legislative prescription, without reference to the individual child. In *Parham v J.R.*, the United States Supreme Court folded best interests into parental judgment, holding that a parent's decision to commit a child to a psychiatric institution needed no independent judicial review of the child's own interests, on the presumption that parents act in their children's interests.<sup>36</sup> Evolving capacities is replaced by a fixed age threshold below which no autonomous decision by a minor may override a parental veto, whatever the child's shown maturity. Section 16(1) of the Kenya Children Act 2022 subjects the provision of reproductive health services to children to the express consent of a parent or guardian, and the National Reproductive Health Policy 2022–2032 fixes 'full cognitive competence on matters of sexuality and reproduction' at the age of twenty-one.<sup>37 38</sup>

**Element displaced:** The redefinition guts the procedural core of the right. It severs Article 5 from the evolving-capacities doctrine it contains, and it severs best interests from the individualised assessment that General Comment No 14 mandates. Once best interests become parental preference or a bright-line age, the child's right to be heard is left with nothing to do.

<sup>35</sup> See, for example, the ratification-opposition campaign of Parentalrights.org, which characterises the Committee on the Rights of the Child as an unaccountable oversight body.

<sup>36</sup> *Parham v J.R.*, 442 US 584 (1979).

<sup>37</sup> Children Act (No 29 of 2022) (Kenya), s 16(1), proviso.

<sup>38</sup> National Reproductive Health Policy 2022–2032 (Kenya), which sets full cognitive competence on matters of sexuality and reproduction at 21 and introduces parental-consent requirements for sexual and reproductive health services.

### 4.3 Moralisation and pseudo-scientific reframing

The distortion: This strategy speaks the language of protection and performs the work of control, substituting moral, cultural and pseudo-scientific narratives for rights reasoning. The child's autonomous rights are cast as threats to the child's own welfare, to family stability and to cultural or religious tradition, with absolute parental oversight offered as the protective answer. Domestically the effect is to privatise child protection; internationally it is to reclassify children's education, health and identity as matters of domestic moral consensus beyond outside scrutiny. The health and education registers are the chief targets: the delivery of sexual and reproductive health services and information, and the delivery of comprehensive sexuality education. Uganda's suspension of sexuality education in and out of school, after protest that children were being taught 'homosexuality', and the contested reception of its 2018 National Sexuality Education Framework, show the pattern at work.<sup>39</sup> Hungary's Act LXXIX of 2021, which bars making available to minors content that 'promotes or displays' gender reassignment or homosexuality across education, media and advertising, was defended as child protection and as a reassertion of the parental role, and was found incompatible with international human rights standards by the Venice Commission.<sup>40</sup>

Element displaced. The strategy displaces the child as an independent rights-holder and reinstalls the child as a passive object of protection fully represented by parental preference. The child's own perspective is recast as the product of manipulation by educators, clinicians or civil society, and is thereby ruled inadmissible as evidence of the child's own interests.

### 4.4 Institutional capture and forum manipulation

The distortion: This strategy targets the infrastructure of the human rights system rather than any single claim, seeking to reshape how children's rights are developed, monitored and enforced. At the United Nations level, proposals to consolidate the treaty bodies into a single reporting procedure or a unified permanent body, advanced in the name of efficiency, carry the effect of thinning the specialised expertise and interpretive guidance of treaty-specific monitoring, the Committee on the Rights of the Child among them. At the treaty level, states enter interpretive declarations that read the CRC 'consistently with domestic family law' or 'in accordance with national culture and religious values', subordinating the child's autonomy to parental guidance and to cultural and religious norms; the declarations of the Holy See, Qatar and Brunei on ratification are of this kind. A further intervention reconfigures the regional architecture through a competing instrument: the draft African Charter on the Protection of the Family, Sovereignty, and Religious and Cultural Values reasserts parental authority over education and health, rejects comprehensive sexuality education, and calls for a reassessment of treaty-body interpretation. Strategic litigation supplies the constitutional groundwork: *Meyer v Nebraska* and *Pierce v Society of Sisters* established a parental liberty to direct the upbringing and education of children

<sup>39</sup> EV Moore and others, 'Debating Sex and Sovereignty: Uganda's New National Sexuality Education Policy' (2022) 19 *Sexuality Research and Social Policy* 678.

<sup>40</sup> European Commission for Democracy through Law (Venice Commission), Opinion on the compatibility with international human rights standards of Hungarian Act LXXIX of 2021.

that can be invoked to strike down child-protection measures cast as interference with parental authority.

Element displaced. The cumulative effect is to draw interpretive authority into more conservative or politically constrained forums and to leave the child's autonomous rights without an institutional home equipped to develop, monitor and enforce them.

## 5. What is lost when the child's autonomy is distorted

The consequences run well past any single dispute. When best interests is redefined as parental preference, the individualised assessment at the heart of the right disappears and is replaced by a presumption that forecloses the child's voice. When evolving capacities is replaced by a fixed age, the graduated autonomy that the law builds precisely to track a child's development is flattened into a wall. The child's right to be heard, severed from any obligation to weigh what is heard, becomes a formality. In the health setting the loss is concrete: adolescents denied confidential services and information are exposed to unintended pregnancy, sexually transmitted infection and untreated distress, and the burden falls first on children already marginalised.

The institutional losses compound the doctrinal ones. Treaty bodies stripped of interpretive authority can no longer give the treaty text operative meaning; courts that absorb best interests into parental right forfeit the tool that lets them protect children within families; and adjudication drifts from principled rights-balancing toward majoritarian morality. The through-line is that these strategies hollow out not only the child's autonomous rights but the architecture that makes any right enforceable, converting a framework built to protect the child into one that shields adult authority from scrutiny.

## 6. Strategic doctrinal responses

A response must do more than assert that rights are balanced. It must show, on doctrinal terms, why each distortion fails, and it must do so in the forum where the distortion operates.

Against the denial of normative status, the answer is that authoritative interpretation is not optional gloss. A General Comment does not invent obligation; it states the meaning of a provision the state has ratified, arrived at in good faith and in light of object and purpose under Article 31 of the Vienna Convention, and a court or treaty body is entitled to give it weight on that footing. The charge that treaty bodies legislate confuses the elaboration of an existing right with the creation of a new one, and the charge that experts displace democracy ignores that the state assumed the obligation by its own sovereign act of ratification. The point to press in litigation is that ignoring authoritative interpretation is not deference to democratic choice; it is a departure from the treaty the state chose to join.

Against the redefinition of best interests and evolving capacities, the answer is that both concepts carry settled legal content that a domestic definition cannot displace. Best interests

demands an individualised assessment, not a categorical presumption in the parent's favour, and General Comment No 14 supplies the standard against which a blanket rule can be tested and found wanting. Evolving capacities forbids a fixed age from operating as an absolute veto on a demonstrably mature minor, and *Gillick*, read with *A.C. v Manitoba*, shows a workable model in which maturity is assessed on the facts and given rising weight rather than excluded by a bright line. A parental-consent rule for adolescent health services should be met with the argument that it converts a graduated right into a categorical bar and so fails the very best-interests test its proponents invoke.

Against moralisation and pseudo-scientific reframing, the answer is to restore the distinction between protection and control and to insist that protective language be tested against evidence. A measure defended as safeguarding children must be shown to serve the child's interests on the facts, not merely to be labelled protective; where the record shows that withholding information and services produces harm, the protective claim collapses. For instance, the denial of necessary, confidential healthcare and life-saving information is increasingly recognised as a form of institutional or state-sanctioned violence and neglect.<sup>41</sup> The child's own expressed view is evidence of the child's interests, not proof of manipulation, and a framework that treats a child's voice as inadmissible has abandoned the individualised assessment the law demands.

Against institutional capture, the answer is to defend the specialised, treaty-specific monitoring bodies and the interpretive authority they carry, and to expose consolidation and interpretive declarations for what they do rather than what they claim. A declaration that reads the Convention 'consistently with domestic family law' cannot lawfully hollow out the object and purpose of the treaty, and a competing regional instrument that reasserts parental dominion does not amend the ACRWC or the CRC by which states remain bound. The parental-primacy line drawn from *Meyer and Pierce* protects the parent against the state; it does not license the parent to extinguish the child's own rights, and the answer to its over-extension is the counter-line, from the African Committee of Experts to the Inter-American Court, that the child holds rights directly and not through the parent.

## 7. Early warning indicators

Several developments signal the next phase of contestation and warrant monitoring, since doctrinal transformation tends to move through institutional practice before it hardens into formal law.

- In domestic legislation, watch for parental 'conscience clauses' that let parents opt children out of state services; for measures that characterise comprehensive sexuality education as grooming and attach criminal liability to educators and health workers through whom children reach information; for parental-veto rules extended to all mental-health services, including crisis intervention; and for the expansion of 'family autonomy' and 'parental rights' discourse in constitutional litigation.

<sup>41</sup> UN Convention on the Rights of the Child, Article 19 African Charter on the Rights and Welfare of the Child, Article 16

- At the treaty level, watch for renewed promotion of the Geneva Consensus Declaration in diplomatic forums, for efforts to limit the Optional Protocol on a Communications Procedure through restrictive declarations and to deny its communications precedential force, and for the campaign around the draft African Charter on the Protection of the Family, Sovereignty, and Religious and Cultural Values.
- Politically, watch for the deepening convergence of religious-conservative movements into a coordinated international network that pools litigation strategy and diplomatic effort.

## 8. Conclusion

The autonomous rights of the child are embedded in international and regional human rights law. They are not derivative protections held at the pleasure of parents, but self-standing entitlements held by the child as an independent rights-holder. The attacks on those rights are structural: they take aim at the doctrinal content of the rights, at the interpretive authority of the institutions that develop them, and at the procedures through which they are accessed and enforced. Defending them therefore calls for command of the legal architecture and of the doctrinal strategies through which the rights are pulled apart and for the readiness to answer each strategy, on its own terms, in the forum where it is deployed.



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