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The right to health of the child: an analytical exploration of the international normative framework

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Citation

Spronk, S. I. (2014, November 27). *The right to health of the child: an analytical exploration of the international normative framework*. Intersentia, Antwerpen. Retrieved from <https://hdl.handle.net/1887/29842>

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Author: Spronk, S.I.

Title: The right to health of the child : an analytical exploration of the international normative framework

Issue Date: 2014-11-27

THE RIGHT TO HEALTH OF THE CHILD

THE RIGHT TO HEALTH OF THE CHILD

An analytical exploration of the
international normative framework

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof.mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
te verdedigen op donderdag 27 november 2014
klokke 15.00 uur

door

Sarah Ida Spronk

geboren te Rotterdam,

in 1981

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Prof.dr. R. Reis
Prof.dr. J.J. Sloth-Nielsen (University of Western Cape, South Africa)
Prof.dr. W. Vandenhole (Universiteit van Antwerpen, België)

Dedicated to my family

“Our deepest fear is not that we are inadequate.
Our deepest fear is that we are powerful beyond measure.
It is our light, not our darkness that most frightens us.
We ask ourselves, who am I to be brilliant, gorgeous, talented, fabulous?
Actually, who are you not to be? You are a child of the light.
Your playing small does not serve the world.
There is nothing enlightened about shrinking
so that other people won't feel insecure around you.
We are all meant to shine, as children do.
We were born to make manifest the glory of light that is within us.
It's not just in some of us; it's in everyone.
And as we let our own light shine,
we unconsciously give other people permission to do the same.
As we are liberated from our own fear,
our presence automatically liberates others.”

from *A Return to Love*, by Marianne Williamson

ACKNOWLEDGEMENTS

Children's rights are a relatively young area in the law practice. As a result, many areas in both the national and the international child and youth sector can be discerned wherein developments are strongly needed, such as the (legal) support for children suffering from maltreatment, refugee children, child soldiers, sick children, orphans and homeless children. Whereas many of these children are vulnerable, I find a great motivation in their resilience and in their creative optimism.

The right to participation of children is one of the main pillars of the United Nations Children's Rights Convention. Its aim is to give children an active role in all matters affecting them, such as decisions on medical treatments, family reunification and protection measures. I believe that the fulfillment of this right can help to strengthen the position of children and to develop their potential. My goal is to support children in developing their capacities, simultaneously learning from their experiences.

The conduct of this research was a challenge that required a lot of patience, persistence and passion. It would not have been possible without the support and inspiration of so many people around me. I whole-heartedly thank all of you for your continuous inspiration, critical reflections and various forms of support. Every page of this book is dedicated to one of you.

Several persons I want to thank in particular. First of all, I want to thank my supervisors professor Mariëlle Bruning and professor Jaap Doek, who both provided me with so many valuable insights and who continuously sharpened my mind. More importantly, their strong involvement with children's rights in both the Netherlands and abroad continuously inspired me to delve deeper into the interesting topic of the right to health of the child. Professor Bruning helped me to focus on one theme and to not loose myself in the many intriguing other topics of the children's rights domain. Professor Jaap Doek supported me in understanding the right to health of the child from an international perspective.

I also want to thank the respectable members of the PhD. Committee: Prof.mr.dr. K. Arts, Prof.mr. A.C. Hendriks, Prof.dr. R. Reis, Prof.dr. J.J. Sloth-Nielsen, and Prof. W. Vandenhoe, for reviewing my manuscript and providing me with valued comments that have without doubt enriched this thesis.

Furthermore, I want to thank Toine van Oosterhout, who generously gave me the opportunity and freedom to conduct this research. Although the topic shifted from a focus on children and privacy to the right to health of the child, the undertaking of this long-term research project has been made possible by his initial support.

I also want to thank professor Simone Buitendijk, who inspired me to focus on studying the right to health of the child. Looking back, it was in a church in Leiden on the occasion of the 20th anniversary of the Convention on the Rights of the Child in 2009, that we discussed the negligence of the health of children in the public domain. We identified that it would constitute a perfect bridge between my interests in international children's rights and in health. I am very much inspired and motivated to further develop the concept of the right to health of the child and to help to gradually put it into practice.

Many thanks to my roommate Maria de Jong-de Kruijf, who provided me with so much 'English drop' that I literally had the biggest babies ever. Your daily humor and our deliberations on day-to-day children's rights issues ensured a sense of normality in the challenging and sometimes lonely process of doing a PhD research.

Many thanks also to the medical anthropological PhD group, who so well understood my connection with children and nurtured both my intellectual and physical needs (healthy soups!). It was a great pleasure to participate in the challenging discussions and to share experiences on research with and by children and adolescents.

Many more people supported and inspired me along the way, Mirjam Blaak, Martin Buyse, Alex-Geert Castermans, Bernardine Dohrn, Caroline Forder, Simone van 't Hof, Ursula Kilkelly, Ton Liefwaard, Peter Rodrigues, my former colleagues at the University of Leiden and my current colleagues at the Ministry of Foreign Affairs, including my diplomatic class and the many people working for children's rights organizations, foundations and institutions: Defence for Children, UNICEF, Save the Children, IPPF, Terre des Hommes, Child Helpline International, the Child-to-Child Trust, Keki, Kinderrechtenu, Stichting Alexander and Stichting Kind en Ziekenhuis and NJCM. It is an enormous pleasure to work with so many people who are highly committed and engaged with children and improving their rights. I also want to thank Fred Lafeber from the Ministry of Health (now the World Health Organization) for taking me to the ministerial meeting in Lissabon in 2011 where the Guidelines on Child-Friendly Health Care of the Council of Europe were officially signed and where again – I met many committed pediatricians and advocates of children's rights, including the TAT Group. And most importantly, I thank the children

and students who shared their experiences in health care with me in a private context.

In the course of this research, I very much enjoyed all the support and hours of laughter with my friends and family. The guest parents who took care of my little girls with so much attention, joy and creativity while I was working on this book also deserve a big thank you and a smile.

I especially and whole-heartedly want to thank my parents, brother, sister-in-law and family-in-law for their never-ending support, love and confidence that you gave to me. Not only in the conduct of this research, but in everything I do. Our discussions, practical support and weekends out in the (urban) jungle repeatedly gave me the inspiration and energy to continue with renewed enthusiasm.

Last but certainly not least, I want to thank Nicolaas and my two beautiful little girls Carmen and Zoë for being with me all the time. Having you all in my life is the biggest joy I could wish for. Nicolaas, you often wondered what on earth inspired me to engage in such a long-term research project. Notwithstanding, you have always stood by my side and your practical tips helped me to bring it to an end. Your unconditional love, care and never ending support enabled me to engage in this research project and to maintain a healthy balance in our own family life. Even more important, you are my living example of what it really means to give children a voice. Thank you very much. I love you!

Carmen, Zoë and the newly expected one, my love for you is far beyond every possible way of expression. Our literal symbiosis in the writing of this PhD research has inspired every single word of it. I am extremely happy and grateful to see you flourish and develop in vibrant health and I am looking forward to every future step that you're making.

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LIST OF ABBREVIATIONS

AAAQ	Availability, accessibility, acceptability, quality
ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACSD	Accelerated child survival and development program
ACWC	Asian Committee on the promotion and the protection of the rights of Women and Children
ADHD	Attention Deficit Hyperactivity Disorder
AIDS	Acquired immunodeficiency syndrome
AIHCR	Asian Intergovernmental Committee on Human Rights
ASEAN	Association of South East Asian Nations
AWBZ	Algemene Wet Bijzondere Ziektekosten
BC	Biomedical Convention
CCRA	Centre on Children's Rights Amsterdam
CEDAW	Convention on the Elimination of all forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CERD	Convention on the Elimination of all forms of Racial Discrimination
CFHI	The Child-Friendly Healthcare Initiative
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CRED-PRO	Child Rights Education for Professionals
CRC	Convention on the Rights of the Child
CRC OP	Optional Protocol to the Convention on the Rights of the Child
DALY	Disability-adjusted life year
Doc.	Document
EACH	European Association for Children in Hospital
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental freedoms
ECOSOC	UN Economic and Social Council
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
ECSR	European Committee on Social Rights
EctHR	European Court on Human Rights
ECHR	European Court on Human Rights
E.g.	Exempli gratia (for example)
ESC	European Social Charter

EU	European Union
EVRM	Europees Verdrag van de Rechten van de Mens
FGM	Female Genital Mutilation
GA	General Assembly
GC	General Comment
GC I-IV	Geneva Convention I-IV
GC AP	Geneva Convention Additional Protocol
GDP	Gross Domestic Product
GNI	Gross National Income
GOBI	Growth monitoring, oral rehydration, breastfeeding and immunization
GOBI-FFF	Growth monitoring, oral rehydration, breastfeeding and immunization – family planning, food supplies and female education.
HIV	Human immunodeficiency virus
HD	Human Development
HDI	Health Data Institute
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHL	International Health Regulations
IICRD	International Institute on Child Rights and Development
ILO	International Labour Organization
IMCI	Integrated Management of Childhood Illnesses
IND	Immigratie- en Naturalisatiedienst
KNMG	Koninklijke Nederlandse Maatschappij ter bevordering van de Geneeskunst
LLM	Master of Laws
MRI	Magnetic resonance imaging
MSc	Master of Science
NCD	Non-communicable diseases
NGO	Non-governmental organization
NKFK	Nederlands Kenniscentrum voor Farmacotherapie bij kinderen
OAS	Organization of American States
OIC	Organization of Islamic Conference
OP	Optional Protocol
PDCO	The Paediatric Committee
PHC	Primary Health Care
PhD	Doctor of Philosophy
PSQ	Patient Satisfaction Questionnaire
QALY	Quality-adjusted life year
RAND	Research And Development
REC	Recommendation

RES	Resolution
SARS	Severe Acute Respiratory Syndrome
SRHR	Sexual and reproductive health rights
TFEU	Treaty on the Functioning of the European Union
UNHDI	United Nations Human Development Index
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNHCHR	UN High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
USA	United States of America
USSR	Union of Soviet Socialist Republics
VN	Verenigde Naties
WGBO	Wet op de geneeskundige behandelingsovereenkomst
WHA	World Health Assembly
WHO	World Health Organization
WMA	World Medical Association

