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# State-Civil Society Relations

## *The Importance of Civil Society for the Implementation of the United Nations Convention on the Rights of the Child*

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### Abstract

This paper explores the international comparative potential of the United Nations Convention on the Rights of the Child (CRC) monitoring process. Interest in such comparisons has increased in recent years; however, several factors limit the efficacy of using CRC reporting documents for cross-national comparisons. Focussing on the role of civil society organisations (CSOs) in the CRC reporting process, we examine how state reliance on CSOs to perform vital functions of the CRC might influence developments in children's rights and how these developments get monitored and recorded. Drawing on Social Origins theory, we illustrate how different state-civil society relationships can lead to heterogeneous and uneven provision of, and reporting on, children's rights issues, interventions and developments. Our evaluation leads us to problematise the use of the CRC Concluding Observations to compare the performance of States Parties on their duty to protect the rights of the child.

### Keywords

children – children's rights – UNCRC – civil society – international comparison

## 1 Introduction

The United Nations Convention on the Rights of the Child 1989 is a foundational document in understanding international efforts to advance children's rights as it aims to develop a 'universalist approach' to the realisation of children's rights (Alston, 1994). The Convention is known as one of the most successful pieces of international legislation as it has been ratified by almost every country. By ratifying the Convention, signatory states make a commitment to embed children's rights into their national laws, policies and practices and to develop a national agenda committed to the monitoring and promotion of children's rights (Gran, 2021). Like other international treaties of this nature (e.g., International Covenant on Economic, Social and Cultural Rights (CESR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)), a committee is appointed to oversee and evaluate the extent to which signatory states have engaged with the Convention and to produce recommendations for states in the form of "Concluding Observations".

The multi-lateral nature of the treaty and its reporting system has prompted interest amongst researchers and third-sector organisations for its potential to be used as a device for cross-national comparison, particularly in the form of internationally comparative indexes which rank countries against one another based on their performance along a range of measures. One example of this is the KidsRights Index, which uses data from UNICEF, UNDP, UNESCO and the CRC Concluding Observations to develop a scoring index which evaluates children's rights performances across five measures (Life, Healthcare, Education, Protection and Child Rights Environment). Other examples include ChildPact's Child Protection Index, Save the Children's Child Development Index and Humanium's Realisation of Children's Rights Index. Whilst the purpose of these indexes is usually to raise awareness about children's rights and to encourage publicity about various concerns, they have also received criticism concerning their methodologies and policy relevance (Langford and Kirkebo, 2019).

This paper aims to explore the potential of using the CRC Concluding Observations for conducting internationally comparative research on children's rights. To do this, we will explore the findings of a documentary analysis of the Concluding Observations of 12 countries, which revealed that any efforts at comparing Concluding Observations must account for the role that civil society plays in the reporting, monitoring and implementation of the CRC, and how state-civil society relationships can vary across different national contexts. Whilst civil society input is not essential to the CRC reporting process, Civil Society Organisations (CSOs) can play an important part (alongside National Human Rights Institutions (NHRIs)) in ensuring full accountability

and transparency of State Parties. Relying on States alone to submit evidence to the CRC leads to States providing ‘inadequate and uncritical information regarding the condition of children’s rights in the state’ (Ramesh, 2001: 1948–9). Our analysis reveals the myriad ways that civil society organisations are important components of the reporting and monitoring process and demonstrates that the state-civil society relationships make a material difference to both the content and the implementation of the Concluding Observations. This paper proposes Salamon and colleagues’ (1997, 1999, 2000) Social Origins theory, which categorises state-civil society relationships into four categories (liberal, corporatist, social democratic and statist), as a useful framework for understanding the differing roles of civil society across different national contexts and the impact of this on the monitoring and implementation of the CRC.

To make the case for Social Origins theory to be used as a means of better understanding the role that civil society plays in the CRC treaty monitoring process, this paper will begin by exploring the purpose and structure of the CRC reporting process, including expectations and assumptions that the CRC makes about the relationship between the state and civil society. Following on from this we will further explore the concept of state-civil society complementarity in greater detail and briefly outline how we are defining civil society for the purposes of this paper. We then go on to introduce Salamon and colleagues’ Social Origins theory as a useful typology for understanding the shifting character of civil society across different national contexts. Following this, we will provide details of our methodology and the documentary analysis that was undertaken to inform the findings and key arguments made in this paper. Then we will discuss the findings of this documentary analysis, focusing on how different state-civil society relationships (particularly the degree and form of civil society) determine the content of the Concluding Observations and the extent to which the recommendations set out in the Concluding Observations are implemented. A final section will discuss the implications of our findings and make suggestions for how research attempting to use the Concluding Observations for cross-national comparison should account for the shifting character of civil society.

## 2 The United Nations Convention on the Rights of the Child (CRC)

### 2.1 *Background to the Convention*

On 20 November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC), which sought to ‘promote the protection of children worldwide’ (Davidson, 2014: 498) by providing them

with an additional set of rights to those granted to adults. The Convention was an important milestone in the international recognition of the rights of the child setting out civil, political, economic, social and cultural rights of 'every human being below the age of eighteen years' (Art 1. CRC). The CRC was well received by the UN members, and it was ratified 'more quickly and by more countries than any human rights treaty in history' (Leonard, 2016: 87), demonstrating a global commitment to improving the conditions of children. To date, all UN members, aside from the United States, have ratified the treaty (see Davidson, 2014).

The CRC has been praised for its near-universality and for the awareness and publicity that it brings to children's rights. Critics, however, have argued that the weakness of the Convention lies in its broadness of scope and lack of specificity of language (Alston 1994). Whilst the Convention calls for signatory states to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention' (Art 4. CRC) they are only required to do so 'to the maximum extent of their available resources' and 'with regard to economic, social and cultural rights'. Whilst this lack of specificity is believed to have increased ratification, it has meant that implementation of the Convention into national law is patchy (UNICEF, 2012) and the principles of the Convention are inconsistently applied across States Parties. McCall Smith writes that many states have opted for an '*a la carte* selection of rights protection, rather than the full menu of rights' (2019: 425).

A common difficulty faced by the CRC and other international treaties is cultural relativism (Alston, 1994) and the difficulties of striking a balance between ensuring that rights are protected but also ensuring there is sufficient flexibility to account for cultural variances (Alston, 1994). The language of the CRC such as 'best interests of the child' (Alston, 1994) and, as we will go to show, 'civil society' are culturally variable and can lead to an inconsistent application of the treaty. The CRC has previously received criticism for being "Western-centric" in its drafting, that is it assumes that the norms of Western society are consistent with the rest of the world (Marchetti, 2010). How the CRC frames and its expectations of civil society are part of this critique, as it assumes a particular state-civil society relationship (and the existence of NHRIs) which does not exist across all States Parties (Lewis, 2001). The CRC assumes a strong and complementary relationship between state and civil society to effectively enable the rights of children. However, as the work of Salamon and colleagues (1997, 1999, 2000) shows various types of relationship exist between the state and civil society, these configurations have the potential to determine the enhancement of children's rights.

## 2.2 *The CRC Committee and the Concluding Observations*

The extent to which States Parties are acting in compliance with the CRC is monitored by the UN Committee on the Rights of the Child (hereby referred to as the “Committee”), an independent body consisting of 18 experts (Art. 43(2)). The role and duties of the Committee are established in Art. 43 CRC, which states the Committee is established ‘for the purposes of examining progress made by States Parties in achieving the realisation of the obligations undertaken in the present Convention’ (Art. 43(1)). Monitoring States Parties compliance is achieved through a cyclical reporting process, which requires States Parties to submit a report to the Committee two years after they initially ratify the Convention, and every five years thereafter (Art. 44(1)). These reports should address the ‘measures they have adopted which give effect to the rights recognised herein and, on the progress made on the enjoyment of those rights’ (Art. 44(1)).

The Committee invites the submission of “Alternative Reports” from CSOs, NHRIS, parents, guardians, children and anyone else with a legal or moral duty to uphold the rights of the child. Civil society organisations played an important role in the drafting of the Convention, demonstrating their position as important actors in embedding children’s rights into national agendas (Fuchs, 2007, Grugel and Peruzzotti, 2007). These Alternative Reports are supplementary/complementary to the reporting process but nonetheless have an important role to play in ensuring state accountability and transparency. It has been said that CSO involvement in the drafting process allowed them to set the agenda on several issues, such as the articles of trafficking and protection of children against exploitation (Turkelli and Vadenhole, 2012). The role of CSO participation in the monitoring and implementation of the CRC are made explicit within the Convention (Arts. 4, 42 and 44 of the CRC and General Comment No. 2 (2002)), which sets out expectations for CSOs to be included in the core roles related to the monitoring and implementation of the Convention. CSO involvement is framed as advantageous by the Convention – allowing for greater state accountability and transparency by ensuring that children’s “on the ground” experiences are accurately represented, helping to advance a broader rights’ respecting culture within societies (Sahovic, 2010).

State Reports and optional “Alternative Reports” are used with evidence gathered during face-to-face meetings with representatives from States Parties and other key actors, to produce a report of its evaluation on the extent to which the State Party has realised its obligations under the CRC – this report is called the “Concluding Observations”. These Concluding Observations will ‘highlight positive developments as well as violations and gaps, principal areas or issues of concern, and make suggestion and recommendations for future

actions' (Save the Children, 2011: 3). As with other treaties, the reporting process is not intended to be punitive but seeks to encourage 'constructive dialogue' between the Committee and States Parties, and between individual States Parties and relevant NHRIs, civil society organisations, universities and international organisations (Meier *et al.*, 2018: 3).

The CRC is not the only international treaty to adopt this reporting process and the process has been used by other UN treaties including: Committee on Economic, Social and Cultural Rights (CESR), Committee on the Elimination of Discrimination Against Women (CEDAW), Human Rights Committee (CCPR) and others. The UN Concluding Observation process is itself influenced by the UN Universal Periodic Review (UPR). The UPR was established with the creation of the Human Rights Council in 2006 (UN General Assembly resolution 60/251) and was mandated to:

Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.

UN 2006:3

The UPR follows a similar cyclical pattern to the one described above in relation to Concluding Observations, although a key difference is that the review process is undertaken by states, rather than an independent committee (Carraro, 2019). There is a large body of literature exploring the monitoring process of the UPR (e.g. Charlesworth and Larking (2015), Cowan and Billaud (2015), Chauville (2015) Etone (2019)). Whilst the UPR, similarly to other UN human rights review mechanisms, is a 'state-centric peer-review mechanism' (McGaughey, 2017: 449), civil society organisations also contribute to the reporting process and there is a literature on this (see Schokman and Lynch (2015), McGaughey (2017)). This literature reveals that whilst civil society has been found to play an important role in the UPR reporting process (Schokman and Lynch write that, 'effective NGO engagement enhances the relevance, efficiency and impact of UN human rights mechanisms' (2015: 126)), their position in the process has also been found to be weaker than in other UN human rights review mechanisms and is 'often under threat from states' (McGaughey 2017: 422). Rights reporting and monitoring processes are significant in shaping the implementation of the CRC in States Parties because they determine *which* convention articles get prioritised and *how* these priorities are addressed (Chaney, 2017).

### 3 State-Civil Society Complementarity

Civil society is broadly presented as the “middle ground” between the private interests of the market and family on one hand, and the public interest of the state on the other (Salamon *et al.*, 2001). Comprising a wide variety of groups, networks and organisations which act independently of the state and the market, it is commonly referred to as the “third sector” of society. Despite this commonly accepted definition, however, the concept of civil society (as we go on to show) is highly volatile and rooted within the socio-economic-political contexts of each country (see Lewis (2001), Hutchful (1995)). As Marchetti (2010:7) summarises:

Following on from this recognition, some even argue that when we discuss civil society in a transnational context, we may refer substantially to different phenomena. While on the surface we may use the same term, ‘civil society’, socially and politically speaking, we might ultimately be referring to very different entities depending on the respective national and cultural contexts.

MARCHETTI, 2010: 7

Whilst recognising these variations and misalignments in how civil society is defined across different national contexts, for this paper, we adopt Chaney’s definition of civil society as ‘the *associational activities* involving non-governmental organisations, charities, pressure groups, community groups, campaigning organisations and social movements’ (Chaney, 2017: 8. See also Keane, 1988). When referring to CSOs, we refer to this same list of organisations, groups and movements. Under the umbrella of civil society is an array of actors, organisations and activities with different purposes, levels of resources and relationships to the state. While some CSOs are well-established, resourced and relatively longstanding, others are more transient – they may appear and grow to address a particular problem or to represent or articulate the needs and priorities of a particular group. We can therefore regard the civil society landscape in any place or time as heterogenous and dynamic, rather than static.

One important function of civil society has, arguably, been its ability to set the agenda for rights advancements. There are many examples of CSOs taking a critical stance to drive state progress on certain social, political and legal issues, including campaigning for non-discrimination based on gender, race, disability and sexuality. Indeed, CSOs were also instrumental in the initial

development of the CRC, and NGOs like Save the Children and UNICEF have long advocated for the rights of the child. In this way civil society can be seen as an important mediator between individuals and the state, allowing for ‘civic-driven change’ (Fowler and Biekart, 2011) to occur. Lockwood describes such activities as contributing to “civic expansion”, a process of definitional change driven by civic activists mobilised by ‘a concern that existing rights are denied, insubstantial or under threat of being diminished’ (1996: 452). In this sense, then, certain CSOs can be regarded as agents of civic expansion, challenging the status quo of what rights should be attributed to whom. Indeed, it has been argued that CSOs hold a special position in being able to hold governments to account and influence their decisions by ‘agitating from outside formal political arenas’ (Post and Roseblum, 2001: 18). In many contexts, however, CSOs working to advance human rights are viewed by states with ‘suspicion or open hostility, especially when explicitly challenging the state’ (Banks and Hulme, 2012: 6). There is also literature on states co-opting civil societies to consolidate power and advance their own interests (see Doyle, 2017). In addition, CSOs can also seek to constrain, rather than expand rights; for example in the USA there are CSOs which campaign to prevent the state from making certain advancements (Edwards, 2020).

Civil society is expected to perform an important role in the monitoring and evaluation of the CRC, as shown in General Comments No. 2 (2002), which states:

Non-governmental organisations play a vital role in promoting human rights and children’s rights. The role of NHRIs [National Human Rights Institutions], with their legislative base and specific powers, is complementary. It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs.

This expectation from the UN that state and non-state actors should work together to deliver on the human rights advancements of the CRC assumes a complementary relationship (Chaney, 2017) between the two parties and overlooks the potential for conflict or dissonance between civil society and the state. It also highlights the important role of NHRIs in mediating this complementary relationship (on the role of NHRIs in the UN Treaty Reporting process, see Zipoli (2019), Takata (2021)). Where a complementary relationship exists between the state and civil society, CSOs can draw on their situated knowledge to promote ‘knowledge transfer, policy responsiveness and effective practice’ in addition to upholding ‘government accountability and legitimacy’ (Chaney 2017: 8, see also Klijn and Skelcher 2007). However, where a



non-complementary, strained or even conflictual relationship between the state and civil society exists, there may be a disconnect between state and civil society framings of, and responses to, the CRC. Moreover, a conflictual relationship between states and CSO counterparts may lead to the suppression of information sharing and restrictions to the work of CSOs. Doek, for example, writes that there have been instances where States Parties have attempted to 'hinder the work of an NGO as a form of punishment for its critical attitude' (2011: 108) and the Committee has been required to intervene in instances where this has occurred. This example, and those offered by Chaney (2017) outlining the potential pathologies and frame dissonances between states and CSOs, undermine assumptions of complementarity between state and non-state partners.

To understand the relative significance of civil society to human rights implementation in UN member states, then, we must understand the 'deep historical roots' that civil society organisations and NGOs have in societies (Salamon *et al.*, 2000: 16). Indeed, civil society organisations and NGOs are 'not only providers of goods and services but important factors of social and political coordination' that are embedded in social and economic structures (Seibel 1990: 46). In the next section we explore Social Origins theory as a means for examining state-civil society relationships from an internationally comparative perspective.

#### 4 Social Origins Theory of State-Civil Society Relationships

In their landmark comparative study of civil society organisations in 22 countries, Salamon and colleagues (1997, 1999, 2000) employ Social Origins theory to distinguish four different state-civil society configurations. Drawing on Moore's (1966) identification of the social origins of fascist, democratic and communist societies, and Esping-Anderson's (1990) exploration of the origins of the modern welfare state, Salamon *et al.* argue that social developments like welfare, democracy or a thriving civil society cannot be explained by a single factor but involve 'much more complex interrelationships among social classes and institutions' (2000:15, see also Ragin, 1987). The four distinct models identified by Salamon *et al.* are classified according to state role, the position of the third sector and civil society organisations, and 'a particular constellation of social forces' (Salamon *et al.* 2000: 16 – see Table 1).

In the liberal state-civil-society model, low government social welfare spending is coupled with a relatively sizeable non-profit sector. This configuration is rooted in 'significant ideological and political hostility to the extension

TABLE 1 Models of Third Sector Regime, taken from Salmon et al, 2000:16

Government Social Welfare Spending	Nonprofit Scale	
	Small	Large
Low	Statist	Liberal
High	Social Democratic	Corporatist

of government social welfare protections and a decided preference for voluntary approaches (Salamon *et al.* 2000: 16). In their analysis of state and third sector spending, Salamon *et al.* (2000) identify the US, Australia and Ireland as having liberal third sector regimes. Conversely, in the social democratic model (Finland, Hungary), extensive state-sponsored/delivered welfare protections mean that there is less need for civil society organisations to perform a social welfare function. In corporatist regimes, certain pre-modern, non-profit institutions (often religious organisations) prevail, and the state works in partnership with these institutions of civil society in order to preserve legitimacy. Salamon *et al.* include the UK in this category, given the continued significance of the church compared to more decidedly secular states parties like France. And finally, statist regimes are characterised by powerful authoritarian states who act in self-interest and minimise the power and efficacy of the third sector. Salamon *et al.* include Romania, Mexico, Peru, Brazil and Columbia in this category in their 2000 analysis.

#### 4.1 *Liberal Regimes*

In states characterised by the liberal model, we might expect to see NGOs and other civil society actors providing welfare functions relating to children's rights, to compensate for low levels of state-level welfare support. Such activities are likely, to a considerable extent, to focus on service provision – safeguarding children and addressing issues of deprivation, discrimination and material inequalities.

#### 4.2 *Social-democratic Regimes*

This type of state-civil society relationship is most likely in societies with high levels of social cohesion, especially when strong alliances between different social classes are apparent (Salamon et al. 2000). This high degree of unification between social classes strengthens the state welfare mandate and minimises the need for civil society organisations to involve themselves in service

provision. This means that civil society organisations take on significantly different roles in social democratic regimes – often as ‘vehicles for the expression of political, social or even recreational interests’ (Salamon *et al.* 2000: 17). Indeed, if the state takes care of many of the social welfare aspects of children’s rights, CSOs may focus instead on children’s “voice”, expression and political representation.

### 4.3 *Corporatist Regimes*

The continued salience of pre-modern and non-profit institutions in corporatist regimes has some potential implications for children’s rights and the role of CSOs in fostering them. In the UK, for example, it is arguably the Church and the various religious norms and customs associated with different Christian denominations that have a prevailing influence on social life (as compared to other pre-modern institutions like Trade Unions). On the one hand, the longevity and institutionalised nature of many faith-based associational groups might point to some consistency in the provision of children’s rights. Indeed, it is generally agreed that different denominations of Christianity share a benevolent and nurturing outlook towards children, reflected in faith-based initiatives to tackle child poverty and enhance child welfare, (e.g., Compassion International, World Vision, Kids Alive). However, it has also been argued that the more traditional and hierarchical elements of religious doctrine – for example those of the Roman Catholic Church – are in tension with the more recent impulse to grant children certain rights that entail factoring in children’s “voices” into discussions that were previously considered the purview of adults (MacAleese, 2020).

The right to freedom of opinion and expression is enshrined in Article 19 of the UN Declaration on Human Rights (1948), and these rights are expanded on in the following articles of the CRC (1989): Article 12: respect for children’s views, Article 13: freedom of expression, Article 14: freedom of thought, conscience and religion, Article 15: freedom of association and Article 16: privacy.

Article 14: Every child has the right to think and believe what they choose, and to practise their religion, provided this does not prevent others from enjoying their rights. The state should respect the rights and responsibilities of parents to provide direction to their child that is appropriate to his or her development.

CRC, 1989

Article 14 (CRC, 1989) has garnered a lot of attention as it is perceived to be in opposition to parents’ rights to raise their children in a religion of their

choosing, despite explicit mention of the rights and responsibilities of parents in guiding their children appropriately in this area. Article 14 is widely regarded as a key and prevailing obstacle to the USA, one of the very few states who are yet to adopt the CRC (Bartholet, 2011). In this sense, then, the dominance of some pre-modern, non-profit institutions in societies that fall into the category of corporatist state-civil society regimes may impede the implementation of certain articles of the CRC whilst fostering others.

#### 4.4 *Statist Regimes*

The extreme power imbalance between state and non-state parties in statist regimes is likely to severely inhibit the operations of CSOs, including those allied to children's rights. Although Egypt does not feature in Salamon *et al.*'s (2000) typology, Chaney, writing in 2017, defines it as an authoritarian state and describes how governing practices in Egypt 'constitute the biggest threat to effective implementation' of the CRC (2017: 9). He goes on to contrast state reporting, which is 'dominated by rote-like listing of enactments that, the authorities claim, further children's rights' with CSO critiques of such reporting as 'largely instrumental and lacking effectiveness' (2017: 15–16). It follows that in statist regimes, government policy elites forge their own priorities without input from CSOs, therefore minimising the scope and efficacy of CSO actors and repressing civil society engagement more broadly. In this context, attending only to state accounts of CRC implementation provides, at best, a partial view of the everyday lives of children and young people. Moreover, ratification of the CRC does not necessarily lead to an improvement in children's rights. We might therefore expect a high degree of dissonance between official state accounts of the ratification and implementation of children's rights, on the one hand, and the everyday lived experiences of children, on the other, in statist regimes.

#### 4.5 *Caveats to the Typology*

It is important to highlight some caveats to the typology presented before moving on to an analysis of the CRC reporting process. Most notably, we acknowledge that state-civil society relationships are dynamic and multifaceted. There are many ways for states to interact with CSOs, and in any state these relationships are likely to 'ebb and flow' over time (Kendall and Knapp, 1997) as different governments with different policy-agendas are elected. Variances within a state may lead to different or uneven implementation and assessment of children's rights, and cultural norms and expectations may lead to variation in the realisation of rights for different children. For example, the typology does not account for (quasi-)federal states and instead adopts a

unitary state analysis. This approach, however, mirrors the approach taken by the Concluding Observations which also do not account for within-state variations (the UK only receives one report despite children's rights being a devolved matter). Notwithstanding these caveats, we argue that there is still much to be gained from applying the social origins typology to understand how relationships between the state and civil society can be a determinant of the CRC implementation and reporting process.

## 5 Methodology

The findings of this paper are based on a qualitative documentary analysis of the most recent, completed, CRC periodic reviews of 12 countries; including reports submitted to the review (State Party reports, CSO reports and NHRI reports) and the resultant Concluding Observations. This documentary analysis is largely exploratory and forms part of a wider research project which explores similarities and differences in how children's rights are conceptualised and enacted across different national contexts, for which we wanted to explore the use of Concluding Observations as a potential tool for conducting international comparison (such as the Kids Rights Index).

Our analysis of the documents follows the process outlined by Bowen (2009), who describes document analysis as an 'iterative process' which involves the 'skimming (superficial examination), reading (thorough examination), and interpretation' (Bowen, 2009: 32) of documents. In line with other research using documentary analysis, as well as exploring what is said in our research it also seeks to reflect on notable absences in the data, that is the 'silences, gaps or omissions' (Rapley, 2018: 124). This research recognises documents as 'social facts' (Atkinson and Coffey, 1997: 47) which are 'both receptacles of content, and active agents in networks of action' (Prior, 2008: 822). We chose to focus on the most recent reporting cycles (for which all documents including the Concluding Observations are available); however, in a small number of instances we also include data from incomplete reporting cycles (where evidence has been submitted to the Committee, but the Concluding Observations are not yet available).

An initial thematic analysis of a selection of CRC Concluding Observations raised questions about the role of civil society in relation to the CRC reporting process and how different state-civil society relationships might act as a potential determinant to children's rights and the application of Social Origins theory. A second review was then undertaken in which our sample was guided by our theoretical framework as described by Salmon and colleagues (1997,

1999, 2000). Documents were reviewed and collated through the UN Treaty Body Database. Table 2 provides further information on our selected countries and how they are positioned in the social origin's typology:

TABLE 2 Research Sample Overview

Country	State-Civil Society Relationship	Characteristics of this Relationship	Reporting Cycle
Australia	Liberal	Large non-profit, low welfare	CRC/C/AUS/CO/5–6 [2019]
Ireland	Liberal/Corporatist	Large non-profit, low welfare	CRC/C/IRL/CO/3–4 [2016]
UK	Liberal/Corporatist	Large non-profit, low welfare	CRC/C/GBR/CO/5 [2016]
France	Corporatist	Large non-profit, high welfare	CRC/C/FRA/CO/5 [2016]
Germany	Corporatist	Large non-profit, high welfare	CRC/C/GER/CO/4 [2015]
Belgium	Corporatist	Large non-profit high welfare	CRC/C/BEL/CO/5–6 [2019]
Finland	Social-democratic	Low non-profit, high welfare	CRC/C/FIN/CO/4 [2011]
Hungary	Social-democratic	Low non-profit, high welfare	CRC/C/HUN/CO/6 [2020]
Spain	Social-democratic	Low non-profit, high welfare	CRC/C/ESP/CO/5–6 [2018]
Romania	Statist	Low non-profit, low welfare	CRC/C/ROU/CO/5 [2017]
Mexico	Statist	Low non-profit, low welfare	CRC/C/MEX/CO/4–5 [2015]
Brazil	Statist	Low non-profit, low welfare	CRC/C/BRA/CO/2–4 [2015]

As this was exploratory research to determine the potential of using the Concluding Observations as cross-national comparative devices, our intention was to explore a small sampling of different countries in detail, rather than to conduct an extensive review. The point of saturation was reached when we were able to develop themes related to the research question (Morgan, 2022) that we set out at the beginning of the study, which was whether the Concluding Observations of the CRC could be used as a methodological tool for a cross-national comparison of children's rights and what the reporting process for the CRC can reveal about the role of the state and civil society in the monitoring and evaluation of children's rights in an international context. Documentary analysis, like other research methods, has its limitations. First, whilst the documents uploaded to the UN Treaty Body database were available in the English language, language barriers meant that finding documents beyond the database was more difficult for the non-English speaking countries. Whilst translation software was used to support this review, there is a higher potential for information to have been missed. Secondly, our reliance of the UN Treaty Body database means that we were only able to include documents uploaded to this database – whether all documents have been uploaded to this database cannot be guaranteed. Additional limitations of using the CRC Concluding Observations for comparative purposes is explored throughout this paper.

## 6 Findings: The Degree and Form of Civil Society as a Determinant of the Monitoring and Implementation of the CRC

Through using Social Origins theory as a lens to understand the Concluding Observations of the CRC, we found that the *degree* and *form* of civil society is a potential determinant of the monitoring and implementation of the CRC. The degree meaning the strength of funding of CSOs and the form meaning the type of CSOs (local, national, international) and the role/functions of these CSOs (protection, advocacy, monitoring, service delivery etc). The following sections will explore these findings in more detail and consider how Social Origins theory can help us understand how the outcomes of the CRC are tied to the State's Parties relationship between the state and civil society.

### 6.1 *Monitoring and Reporting*

This first section is concerned with the reporting process of the CRC and explores what our analysis reveals about how the degree and form of civil

society can be determinant of the CRC monitoring and reporting process. Our analysis shows a clear relationship between the state-civil society relationship of a State Party and the involvement of CSOs in the monitoring and reporting process of the CRC. As anticipated, States Parties with greater state-civil society complementarity and better-funded third sectors had much higher levels of engagement from CSOs in the reporting process. They had higher numbers of Alternative Reports, as well as a higher likelihood of States Parties having collaborated with CSOs to write their State Party reports and were also more likely to have a report submitted by an NHRIS (as countries with greater state-civil society complementarity were also more likely to have NHRIS established to mediate this relationship). For example, the UK (liberal/corporatist) outlined in their State Party report how CSOs had been involved in the development of the report submitted for their 5–6th periodic review, demonstrating the close relationship between the state and civil society in the monitoring and advancement of children's rights:

From the beginning of this process of preparation of this report, the UK Government has worked to demonstrate its commitment to an open and frank dialogue with children and young people and non-governmental organisations ... Each of the contributions to the UK report from the devolved administrations was also informed by discussion and consultation with key partners ... An additional UK-wide consultation event took place in May 2007, the purpose of which was to gather the views and comments of key NGOs from across the UK, acting as 'critical friends', about the draft UK report. This was followed by a four-week consultation period for the NGOs to submit written comments on the draft report, also including the views of children and young people.

CRC/C/GBR/4: 5–6

Whilst social-democratic countries did often have CSO input into the reporting process, these reports were often less detailed than those of liberal or corporatist countries and tended to be far narrower in scope. For example, Finland's State Party Report, submitted for their 4th periodic review, mentions that 40 NGOs were consulted in the development of their report and references are made to NGOs throughout the report. However, we were unable to find evidence of CSOs having submitted reports separately from those of the state, and the State Party report does not provide the names of NGOs that were consulted or provide any additional information on the type or scope of the NGOs. The amalgamation of the Alternative Reports into the State Party report could mean that the views and evidence of CSOs is being filtered by the State Party



and therefore may not be a true reflection of the children's rights situation in Finland.

Countries who fit with the Statist model generally had the least amount of evidence submitted by CSOs and the evidence that was submitted was usually narrow in scope – reflecting specific but serious children's rights violations. For example, in Brazil's 2nd–4th periodic reviews, Alternative Reports were submitted by CSOs, organised to protect children against sexual exploitation, homicide and child labour. The severity of these children's rights violations also mean that the Concluding Observations produced by the Committee addresses significantly different thematic areas to those of the other countries reviewed. For example, Brazil's Concluding Observations included a section on “violence against children”, which was not a thematic area included in the Concluding Observations of other States Parties. Statist countries were also more likely to have insufficient amounts of data and evidence to support their review, and that the evidence submitted by CSOs is not always sufficient adequately to inform the reporting process. The Concluding Observations for Brazil's 2nd–4th periodic reviews state:

The Committee is concerned about the insufficient data on children in street situations, children with disabilities and indigenous children, as well as the inadequate data on violence against children, including sexual violence and trafficking children.

*CRC/C/BRA/CO/2-4: 3*

Greater collaboration between the state and CSOs was listed as a concern in the Concluding Observations of all the Statist countries included in this review. As in the following example, drawn from the Concluding Observations of Romania's 5th periodic review:

The Committee calls on the State Party to effectively involve civil society, including non-governmental organisations and children's rights organisations, in the development, implementation, monitoring and evaluation of legislation policies, plans and programmes related to children's rights and to develop a transparent system of contacting civil society for the delivery of social services to complement the government efforts.

*CRC/C/ROU/CO/5: 3*

As Chaney writes, Statist countries can often be hostile towards CSOs and the statist countries included in this review did not have NHRIs to facilitate this relationship. In statist countries, opposition to or critique of the state

could present a risk to the individual who has spoken out, and this threat to their personal safety could limit or influence the evidence that is submitted in Alternative Reports. Concerns about the treatment of CSOs were raised by the Committee in the Concluding Observations for Brazil as the Committee recognises:

The physical attacks, disappearances and killings carried out against journalists and children's rights and human rights defenders, particularly those working on issues concerning children's rights.

CRC/C/BRA/CO/2-4

In statist countries, international NGOs were more likely to take on a greater role in the reporting process, as they are more likely to be protected from the repression, reprisals and victimisation that may affect indigenous NGOs critical of government in statist countries.

Whilst the degree of civil society involvement is an important determinant for the Concluding Observations, the *form* of these civil society organisations was also found to be an important determining factor. The scope, focus and remit of these CSOs had consequences for the data that was made available to the CRC Committee, which influenced the themes that the Concluding Observations would focus on. Because of the greater role of the state in delivering welfare, corporatist countries were more likely to have evidence submitted by CSOs operating in specific areas of children's rights. For example, for France's 5th periodic review, evidence was submitted from CSOs covering topics such as autism, baby food and charities protecting child refugees. This means that there are sections within the Concluding Observations addressing topics which are not addressed in other countries' Concluding Observations. For example, the submission of evidence from an Autism charity (Autisme France) means that there is a section in France's Concluding Observations discussing the rights and attitudes towards children with autism. However, this thematic area is not addressed by the other countries reviewed, and it is also not addressed in France's Concluding Observations in previous reporting cycles. This finding is consistent with a review of Concluding Observations carried out by Save the Children (2011), who found that Alternative Reports sometimes provide 'extensive and detailed information on a couple of issues, usually overlooked by the government' and that this contributed 'to an issue-based and non-systematic approach, rather than a systematic, holistic and comprehensive outlook' (Save the Children, 2011: 6).

The degree and form of civil society also influenced whose voices were included in the reporting process and what issues these voices were discussing. Our review revealed that the voices and lived experiences of children were primarily sought by and discussed in the reports of CSOs. Children's voices might be included in the reporting process through 'written report[s], peer research, film, case studies, illustration, or any other way in which they wish to share their views' (Child Rights Connect, 2020). There are examples in the Alternative Reports of children's voices being included through survey data and short films (as in UK Alternative Reports). As CSOs were often a vehicle for the inclusion of children's voices in the reporting process (Doek, 2011), countries with weaker civil society landscapes were less likely to have any input from children themselves. Consistent with the findings of our review, Doek (2011), found that the reliance of the Committee on CSOs to include children, means that the involvement of children is inconsistent across States and some NGOs do not include information in their Alternative Reports on how children have been engaged with. On the whole, Doek observed that the 'overall picture of child participation is bleak' (Doek, 2011: 109) and this was consistent with the findings of our review which revealed very little involvement from children and young people and inconsistent involvement *across* countries but also *within* countries across different reporting cycles.

## 6.2 *Implementation*

As discussed in previous sections of this paper, the non-adversarial nature of the Concluding Observations means that the Committee does not have any power to enforce their implementation, and depends on States Parties to establish mechanisms to ensure that the recommendations are being carried out. The Committee also relies heavily on the role of civil society and the national media to draw attention to the Concluding Observations and to encourage States Parties to take action on their implementation. Doek writes that the lack of a follow-up with the Committee to the Concluding Observations is 'one of the major concerns in the human rights monitoring system' (2011: 109). The extent to which States Parties take steps to implement the recommendations set out in the Concluding Observations can vary significantly (Doek 2011).

The findings of our analysis suggest that the quality of the follow-up to the Concluding Observations is also impacted by the State-Civil Relationships that exists within a State Party because of the important functions that CSOs and NHRIs play in disseminating the Concluding Observations and pressuring Governments to act on the recommendations of the States parties. Spain's

(Social Democratic) State Party report submitted to their 5th–6th reporting cycle outlines the role that CSOs play in their implementation process:

Non-governmental organisations play a key role in raising awareness, promoting dialogue and advocacy, exposing situations where children's rights are being violated and cooperating with public authorities in the preparation and conduct of a wide range of action and intervention programmes. They also play a role in planning and monitoring implementation of the Convention, through programmes to promote children's education, health and quality of life and through their active participation in an effort to uphold children's rights, funded by subsidies from the public authorities. The children's platform, which comprises 58 entities, plays a central role in this follow-up process by drafting reports which complement implementation of the Convention on the Rights of the Child and by compiling contributions by children and teenagers relating both to the national strategic plans for children and to the aforementioned reports.

CRC/C/ESP/CO/5–6:10

The accessibility of Committee documentation varied between States Parties and in scoping out the documents to include in our analysis, we found it was easier to locate information on countries with better-funded civil societies because it was often CSOs that made this information easier to find and more accessible. In addition, CSOs and NHRIs were also more likely to develop child-friendly versions of the Concluding Observations, ensuring that these reports could also be read and understood by children and young people (for examples of these Child-Friendly reports, see Children's Rights Alliance England (2017), Children's Rights Alliance Ireland (2008) and Australian Human Rights Commission (2017)). Countries with smaller civil societies were more likely to have recommendations in their Concluding Observations concerning the extent to which the recommendations of the Committee had been disseminated and the overall knowledge of children's rights within that State Party.

Whilst the role of CSOs in ensuring effective implementation of the CRC is not formally recognised, however, CSOs perform important informal roles to ensure the implementation of the CRC and the Committee recommendations. Due to the unenforceability of the Convention, the Committee is reliant on CSOs to pressure States Parties into enacting legal, social and political change. The implementation activities undertaken by CSOs can take place regionally, nationally, internationally or even globally, depending on the organisation and their remit. With regard to the general implementation of the CRC, CSOs

perform functions such as: monitoring and evaluating state performance (see for example, the Kids Rights Index which uses the Concluding Observations alongside other indicators to develop a score of how well each country is performing in relation to children's rights), pressuring governments to act in compliance with principles of the CRC, monitoring law reforms to ensure CRC compliance, highlighting and contesting state violations of the CRC, monitoring state budgets to ensure they are budgeting for children's rights, and raising awareness of the CRC through the provision of training and education.

CSOs then are considered essential parts of the process, with the responsibility of ensuring States Parties' implementation of the Concluding Observations often falling to them. There were several examples in the Concluding Observations of the Committee raising concerns about the impact of the lack of involvement of CSOs in the children's rights work of States Parties, with particular concerns being expressed about the effect that this lack of involvement has on the dissemination and implementation of the Convention. Brazil's 2nd–4th Concluding Observations state that Brazil should:

Systematically involve 'non-governmental organisations (NGOs) working in the field of children's rights in the development, implementation, monitoring and evaluation of laws, policies and programmes related to children.'

CRC/C/BRA/CO/2–4

Similarly, Mexico in their 4th–5th periodic review is advised to ensure that the 'views of children, civil society and relevant international organisation should be duly considered' (CRC/C/MEX/CO/4–5: 3).

Save the Children (2011) acknowledge that without civil society actors raising awareness of the Concluding Observations it is unlikely that they would be taken seriously by the States Parties. Hafner-Burton (2008) has written about the importance of "naming and shaming" by media and civil society organisations to ensure the enforcement of international treaties. This approach is not unique to the CRC and is often a common enforcement approach that is relied on by treaty-makers; however, this is arguably more important for children's rights as children are a group of citizens without access to the full range of communicative legal avenues to self-advocate in comparison to adults. The efficiency of this "naming and shaming" approach, however, is likely to depend on wider social/cultural understandings of the role and place of children in society, as well as the ability of CSOs within each nation state to effectively and safely critique government actions. It is likely in some States Parties, issues surrounding children's rights will not sell as many papers/get as many online

“clicks” than in other more “child centred” societies. The increasing popularity of children’s rights narratives in certain nations is also more likely to lead to an increase in media attention on these issues, which could lead to a strengthening of the Concluding Observations within these States Parties. Like States Parties, the extent to which CSOs engage with the Concluding Observations varies between States Parties. Save the Children (2011) write that:

Although today national coalitions and NGOs in close to all countries contribute to the CRC reporting, yet not many of these organisations follow through the process by advocating for dissemination of the Concluding Observations and the implementation of Committee recommendations. This might be due to a slow start in CRC reporting, a fragile state and/or a weak civil society.

Save the Children 2011: 4

## 7 Conclusions

The CRC seeks to draw on the strengths of both state and civil society to improve the everyday lives of children. Whilst the primary duties to ensure that children’s rights are respected is placed upon States Parties, the lack of enforceability of the Convention has prompted the need to include CSOs in the process to pressurise compliance and to provide an additional layer of scrutiny. The ability of CSOs to undertake these functions, however, is dependent on the form and degree of civil society within each of the States Parties. Salamon and colleagues’ typology of differing state-civil society configurations allows us to think through the ways that the *degree* and *form* of CSOs within each State Party is a likely determinant for the effective monitoring and implementation of the CRC. The Convention’s reliance on CSOs to carry out particular functions means that States Parties which have developed an enabling environment for civil society are more likely to possess the necessary infrastructure to advance their children’s rights agendas through embedding the principles of the CRC within social, legal and political processes.

Through an application of Salamon and colleagues Social Origins theory (1997, 1999, 2000) we are able to explore how CRC monitoring and outcomes can be determined by state-civil society complementarity. Our review of the data has revealed that countries with better-funded and more diverse civil societies (Liberal/Corporatist), where state-civil society relationships are fostered through NHRIs, tend to receive more favourable outcomes under the reporting process than countries with smaller civil societies. Our review also shows that

the type of CSOs involved in the reporting process has a material impact on the topics addressed within the Concluding Observations – which can lead to inconsistent reporting between countries. Implementation of the Concluding Observations was also found to be determined by state-civil society complementarity with countries with better-funded CSOs and NHRIs, being more likely to receive more positive comments on dissemination of the Concluding Observations and overall awareness-levels of children's rights within the State.

This analysis highlights the need to be cautious when seeking to compare children's rights internationally because of how vulnerable to variation Concluding Observations are, depending on the relationship between civil society and that State. Similarly, there is potential for the arguments set out in this paper to be extended to provide additional insights on other UN rights treaties using the same review processes, influenced by the UPR (e.g. treaties such as Committee on Economic, Social and Cultural Rights (CESR), Committee on the Elimination of Discrimination Against Women (CEDAW), Human Rights Committee (CCPR) and others.). In this paper, we have suggested the use of Salamon and colleagues' state-civil society typology as one way that researchers can account for the changing character of civil society across nation states, to show that any international comparative research on children's rights might also seek a deeper understanding of civil society.

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