Research proposal: “Looking at Law through Children’s Eyes”

By Marieke J. Hopman

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Introduction

Although we recently celebrated the 25th anniversary of the 1989 UN Convention on the Rights of the Child (hereafter CRC), children's rights are grossly violated on a daily basis and on a global scale. In fact, despite the popularity of human rights and children's rights discourses, UNICEF director Anthony Lake argued that in 2014 '[c]hildren have been killed while studying in the classroom and while sleeping in their beds; they have been orphaned, kidnapped, tortured, recruited, raped and even sold as slaves. Never in recent memory have so many children been subjected to such unspeakable brutality' (UNICEF, 2014, no page).

Children find themselves in an interesting socio-legal position; they are often positioned as a kind of possession of the parent, even though they have individual rights. They are positioned as citizens of the state, even though they are not allowed to participate fully as citizens (for example they are not allowed to vote). The fact that the CRC has been ratified by 191 UN countries,[1] however, seems to imply that there is a universal consensus on the position of the child in the international legal community; namely, a young person who needs special human rights to protect its special social position.

When trying to understand why in society children's rights are being so grossly violated, children's rights researchers usually (if not always) depart from an adult's perspective. Not only does legal power in society lie with adults, for it is adults who constitute the sovereign, who vote, who are judges and teachers and parents, but also it is mainly adults who are legal researchers.[2] Therefore the question "what are children's rights (violations)?" has been answered mostly by adult researchers answering questions about legal concepts such as laws and rights, analyzing national and international statutory law and connecting this to an idea of childhood as found in developmental psychology or another academic discipline that provides a picture of childhood.

The working hypothesis of the proposed research is that to understand violations of children's rights more, one has to look at law through children's eyes. I suspect that this will lead to a form of legal pluralism. In my previous research on children's rights and child combatants (Hopman, 2014), understanding law as (any kind of) formal written law that addresses citizens (or, children) seemed to be a too limited perspective. Not only in the sense that it rules out non-state legal orders, but even when considering state law, I am inclined to argue that there are different forms of law in addition to written formal law (see under "theoretical framework"). For children, law is not necessarily what is stated in state legal codes, of which they are generally unaware, rather it is what their parents or their teachers tell them.[3]

Take for example the situation of domestic sexual abuse of children. This practice clearly goes against both national and international law. So why do children sometimes "agree" to have sex with their caretaker, especially when they detest this practice? Why do they not just go to the police, or generally ask for help (Kitzinger, 1997: 168, 175)? I suggest that when looking through children's eyes we can understand some of these instances when we see that in fact the child is *complying with the law*. They comply with the law that the abusive father, who rules over the child, has installed: "you are not allowed to talk about our little game to anyone". If children's rights

[1] The United States of America, as of 2 October 2015, is the only state in the world that has not ratified the CRC (United Nations n.d.).

[2] Cf Darbyshire et al.: 'Children also have no political 'clout'. They most certainly 'consume' but do not vote, lobby, organize or campaign and thus possess what Mayall (2002: 154) has called 'non-citizen status'. The 'exclusion of the voices of children from the political culture of the public sphere' is therefore commonplace (Kulynych, 2001: 259)' (2005: 419).

[3] See for example de Sousa Santos (2002: 392-3), who defines different legal orders, including the family.

violations are analyzed in this way, if we truly listen to children,[4] we might be able to understand much better what rights and laws are for children, and consequently, why their formal rights are being violated.

The main question for the proposed research is: "Can violations of children's rights, in different cultural, social and political contexts, be better understood if analyzed within a legal pluralist framework, taking into account the child's perspective and the relations of power inequality corresponding to the different legal orders surrounding children? And consequently, how can this understanding be used to improve the concrete situation of children?".

Sub-questions include:

1. What is law, what is a legal order?
2. What different legal orders apply to children?
3. How can we understand children's rights with regard to local, national and global legal orders?
4. What/who are the different legal actors in relation to children's rights and how do they relate to each other?
5. What is the role of power inequality within the legal order as related to children's rights?
6. How can children's rights researchers understand children's rights violations in different cultural, social and political contexts?
7. How can children's rights researchers capture the child's perspective on their rights, and how can this contribute to understanding the violations of children's rights?
8. How can a possibly better understanding of children's rights violations, informed by the child's perspective, be used to improve the day-to-day situation of children?

Ultimately, the aim of the research is to create a new understanding of children's rights violations which opens up (possibilities for) social transformation. The assumption here is that a better understanding of different legal orders relating to children and children's rights will provide information useful for policy. As in the situation of domestic sexual abuse of children described above; to improve the situation of children, politicians might decide to amend national or international law. However, if we understand that the family legal order here operates relatively independent from the national legal order, we can understand that such a policy change has limited effect. In exchange, one could construct a policy that targets the family legal order and its inherent relations of power inequality more directly.

[4] The underlying idea is that 'children are reliable informants of their own experience' (Danby and Farrell 2005: 49). See also: Scott (2008: 88), Hendrick (2008: 57) ,Christensen and James (2008a: 6), Alderson (2001: 9).

Theoretical framework

To be able to look at law through children's eyes, first I need to design a theoretical framework. This framework will consist of five elements:

1. Law as social fact, created by legislator

I will understand laws as human-created social facts (Searle 1995, Searle 2011). We only notice that there is a law, because someone (an individual or a group of people) has created a rule that we (the legal collective, or relevant community) perceive as law, only because we understand this individual or group that created the rule to be authorized to create laws. The being authorized of the legislator, or (attribution of) empowerment to the legislator, leads back to a basic norm (or what Hart calls a "rule of recognition" (Hart 2012: 100));[5] the norm that presupposes that one ought to behave such as has been commanded by the legislator, or: that the legislator is a legitimate legislator, or: that indeed this individual or group has been authorized to create laws.[6] The recognition of law as law depends on the recognition by the relevant legal community.

2. Authority of the sovereign by the relevant community

As Hobbes wrote, without sovereign, men have no law.[7] By the act of authorization, the people erect a 'common power', to which they subject themselves. By doing this, they confer power upon the sovereign, which is an artificial person (Hobbes 1996a: 88-91). It is therefore the relevant legal community who believe (which for Searle is a form of acceptance, or recognition) that the sovereign has authority and power, which gives the sovereign its legislative power.

Haugaard has illustrated this with the following example: 'what distinguishes the actual Napoleon from the 'napoleons' who are found in psychiatric institutions is not internal to them but the fact that the former (unlike the latter) had a substantial ring of reference[8] which validates his power' (Haugaard 2008: 122). In my view this example is slightly exaggerated because there are many differences between the actual Napeolon and 'napoleons' in psychiatric institutions, but what the example clearly shows is that (legal) power is not self-referring. In other words, believing you are the sovereign does not make you sovereign - the sovereign is made by the acceptance (or believe) of the relevant legal community. This gives the sovereign authorization and power. Or, as Haugaard explains this point: '[…] power is not a zero-sum phenomenon which exists 'out there' in the world as a pre-given entity. Rather, power is created by social order' (Haugaard 2008: 119).

So this is why children's ideas about law are relevant; whoever they believe has legal power over them, can create law for them, can tell them what to do. For example the father who tells the child at what time he/she has to go to bed (as illustrated in the comic below). The reference to the contract illustrates how actually laws are made over children, without them entering in any agreement such as a social contract with a sovereign.

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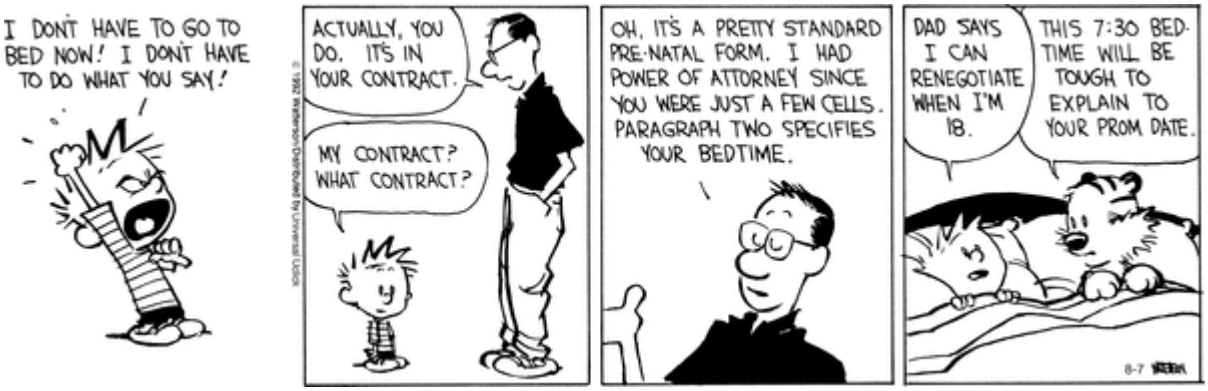
[5] In other places in his work Hart refers to these rules as "accepted fundamental rules" (62) or as "secondary rules" (81).

[6] See: Lindahl (2013: 146-55), Kelsen (2002, 2009: 8-9), Kelsen (2007: 115-7).

[7] Except for natural law, which according to Hobbes is a concept different from the notion of "law" that we maintain here. In fact Hobbes seemed to agree when he wrote: 'Where there is no common Power, there is no Law: where no Law, no Injustice' ((Hobbes 1996a: 90)). It seems a strange statement to make after having extensively discussed natural laws. I would argue that Hobbesian "natural laws" in a state of nature are not proper laws, but rational principles, discovered by reason; logical deductions. Whereas proper (legal) laws designate rules, principles decided by the legislature, that have to be obeyed only as long as the sovereign is a sovereign, that is, as long as it has the power to protect its subjects.

[8] Or, relevant community.



(Watterson, 1992, no page).

3. Three forms of statutory law

As I argued in the introduction, I want to design a theoretical framework that takes up a broader perspective on statutory law than one that is limited to written formal law. In my previous research I have distinguished the following three forms of law:

	written formal law (A)	law for the community (B)	non-public law (C)
Written	+	B1	C1
Non-written	-	B2	C2
Public	+	+	-

So in addition to written formal law (A), which is both written and public and can be found in official legal codes, there is law for the community (B) and non-public law (C).

The second form of law, the law for the community (B) refers to what the subjects of a legal order believe the law actually is and what the law tells them – under the condition that this belief is the result of a relevant legislative act. It can be defined as rules created by the legislator, known by the subjects of the legal order. There are two kinds of law for the community; written and non-written (B1 and B2). Mostly, the written formal law and the law for the community overlap. In this case the written formal law is the written law for the community (B1). More complicated is the non-written law for the community (B2). This again can occur in two situations; either in a situation of a legal order that has no written formal law (B2i), such as for example a family legal order, or in a situation when a non-written law for the community contradicts written formal law (B2ii).

Situation B2ii comes to the fore when the subjects of a legal order have knowledge of a law, issued by the legislator, that contradicts the written formal law. An example would be the Dutch soft drug law. According to Dutch written formal law, the "Opium Law" (A), it is forbidden to sell (amongst others) hash, weed and magic mushrooms, categorized as "soft drugs" (Dutch Opium Law, 2(b), 3(b)(1)). This same law designates what executive powers are responsible for the enforcement of this law (ibid, 8(j), 8(k)) and how enforcement should happen (ibid, 9). Punishment for anyone selling drugs can be either a prison sentence of two to five months or a fine (ibid, 11.1-11.3). However, as most Dutch citizens (and non-Dutch, for that matter) know, "coffeeshops" selling all kinds of hash, weed and magic mushrooms, are flourishing in the Netherlands. This is not due to inefficaciousness of the legislator; it is the unwritten law of the

Dutch legislator that allows for the selling of soft drugs by coffeeshops under certain conditions. This policy is called "gedoogbeleid" ("tolerance policy") (B). Information about this tolerance policy can be found in several places, such as academic writing[9] and on the government website[10] although it directly contradicts written formal law.[11]

The third form of law, the non-public law (C), constitutes the level of hidden power and corruption. It can be defined as non-public rules created by the legislature, known only to a specific group of people. Of this form of law again there are two kinds; written and non-written non-public laws (C1 and C2). An example of a written non-public law (C1) is the USA/NSA practice of domestic surveillance before this was revealed to the public by E. Snowden. In this case the written formal law (A) stated that the collection of communications without a warrant was allowed when at least one end of the communication was a non-US person (Fisa Amendments Act of 2008). However, for the NSA a top-secret document was created, under legal authority enabling the agency to warrant the reading of emails and tapping of phone calls between US citizens (C1) (Akkerman 2013, Waterman 2013).

A possible example of a non-written non-public law (C2) might be the rule-based allowing of certain high party officials to take public money and use it for their personal gain – which is said to happen, and/or have happened in Uganda – if these practices occurred, and if they were indeed initiated by a non-written rule created by the Ugandan legislature.[12] In general, corruption

[9] See for example Buruma (2007).

[10] See: (Rijksoverheid n.d.).

[11] The example of Dutch *gedoogbeleid* illustrates that non-written law does not necessarily have to be orally communicated law (such as a direct verbal command by the legislator). Instead, there can be (non-formal) documents describing the law, without actually stating the non-written law, or recognizing the law as law. Such is for example the information on *gedoogbeleid* provided on the website of the Dutch government. It describes the workings of a non-written law, to which it implicitly refers. For example, its first line states that "Soft drugs are less harmful for public health than hard drugs. Coffeeshops are allowed to sell cannabis under strict conditions"- thereby referring to a non-written law which states that coffeeshops are allowed to sell cannabis. The document further lists these conditions. The same kind of documents explaining the workings of formal written laws can be found on the government website – usually these documents are used to turn complicated written formal law into law for the community.

[12] A report by Human Rights Watch and the Yale Law School argues that corruption in Uganda, benefitting the high placed government officials, is indeed allowed by the legislator. They imply the existence of an underlying non-written non-public rule when they argue that 'Years of evidence indicate that Uganda's current political system is built on patronage and that ultimately high-level corruption is rewarded rather than punished'. See: Lowenstein (2013). In fact, the report is a good example of how the ever-implicit de jure / de facto distinction obscures the actual legal situation of finances and corruption, in this case in Uganda. All the report can state is that there is a law (A) and what the law states does not de facto happen. For example, according to the report, '[e]xisting Ugandan laws require "leaders" to disclose financial assets. This is an enormously important obligation that, if it implemented, would greatly enhance the transparency of public officials' finances and likely deter public graft. The public also has a right to information (deemed in the public interest) under the constitution and the Access to Information Act. Despite the numerous laws, however, Uganda's regulatory framework to combat corruption fails to apply the requirement of asset declarations to presidential appointees and other high-level officials, the tribunal to challenge the content of declarations has never been established, and there is no system for the public to access information regarding financial assets of officials' (27). This kind of analysis implies that the law is "correct" and that it is only a matter of enforcing the law by, for example, setting up a proper system for the public to access this information. However, the problem is not necessarily a question of lacking resources or lack of practical solutions, but rather the cause of corruption here lies with Ugandan unwritten non-public law, created by the legislator for an elite group. This law, judging from the analysis in the report, would in written form be something like "the president and other high-level officials are exempted from law (A) that requires existing Ugandan leaders to disclose financial assets". The corrupt government high-level officials do not just take money on their private initiative – they abide to unwritten, non-public rules. This is in fact the core of the issue of corruption.
For a discussion of corruption in relation to the legal order, see Nuijten & Anders (eds.)(2007). The editors argue that '[…] most important, we take distance from the commonly held view that corruption is simply the law's negation, a vice afflicting the body politic. Instead, we argue that corruption and the law are not opposites but

usually falls under this category. Obviously, C laws and in particular non-written non-public C2 laws are extremely hard to research.

4. An analysis of adult ethnocentrism

Theoretical discussions on children's rights do not involve children and when children are interviewed, their answers are "explained" by adult researchers. Rarely are children asked why they hold a certain view. I will argue that the adult-perspective in children's rights research is a form of adult ethnocentrism that is not sufficiently recognized as such,[13] and that holds us away from really understanding the violations of children's rights. I will try to analyze this form of adult ethnocentrism, which plays its part not only in children's rights research, but generally in relations between adults and children,[14] by making a comparison between childhood and madness as perceived categories of "otherness" in society,[15] using Foucault's work on "Madness and Civilization" (Foucault 2001). This, I expect, will provide a useful framework for the analysis of the role of power inequality within the legal order as related to children's rights, specifically concerning the role of laws and rights in relation to the socialization of the other (child) (Foucault 1997, 2001).

5. An analysis of possible legal orders for children

I will develop a hypothesis of different legal orders for children, mostly focussing on the family, the classroom and the state – but leaving room open for other legal orders, such as the village, the workplace, and others.[16]

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constitutive of one another. Thus, we propose an approach that transcends binary oppositions and explores the hidden continuities between corruption and its antonyms law and virtue' (2).

[13] There seems to be a similar problem in developmental research, and here the problem seems to be wider recognized. Skolnick for example notes that '[o]ne surprising limitation is that most developmental research has little to say about children and their daily lives' (1975: 52). This is not surprising, as the role of developmental research in informing children's rights research and policy is important and authoritative (in the sense that it is perceived as possessing a high truth/knowledge-level). Mayall even argues that developmental psychology is 'the discipline which has achieved dominance, as providing authoritative and factual knowledge for [child] professionals about children […]' (2000: 244).

[14] Bridgeman and Monk in this context speak of 'the artificiality and rigidity of the adult-child divide' (2000: 235).

[15] Cf. Smith: 'Discourses of childhood can be deployed in ways which simultaneously obscure and reinforce unequal relations of power such as those based on class, race or gender. We know from Foucault (1977) that discourses are 'normalizing' in that they operate to differentiate between the 'normal' and the 'abnormal'' (2012: 35).

[16] Taking as its basis de Sousa Santos' analysis of six main legal orders (2002: 192-3).

Methodology

Involving children in research – something to which children have a legal right, according to the UNCRC art. 12[17] - has until recently not happened in academic research in general, although this is now changing. According to Christensen and James, '[t]raditionally, childhood and children's lives have been explored solely through the views and understandings of their adult caretakers who claim to speak for children. This rendered the child as object and excluded him/her from the research process' (2008a: 2).[18]

To find law for children, I propose to use the theoretical framework as described above, to sketch a tentative, expected legal field as related to a particular legal issue for children, such as for example the right to education. Then, for each legal order, the researcher can try and identify the relevant kinds of law; which levels apply? This starts by defining who is (are) the legislator. For level A law (formal written law), one has to search whether there are written formal documents that state the laws of the legal order. To find level B law (law for the community), one has to find the relevant legal community; these will be the addressees of the law. To find level C law, the researcher must try to define potentially excluded or included or otherwise potentially addressed by special non-public laws.

For example, when studying the right to education in the Netherlands, the hypothetical legal field may look as follows:

Legal order	**Legislator (sovereign)**	**Relevant legal community**
International legal order	United Nations	All residents of the Netherlands (including non-Dutch nationality), in particular Dutch government.
Regional legal order	European Union	All residents of the Netherlands (including non-Dutch nationality), in particular Dutch government.
National legal order	Dutch government	All residents of the Netherlands (including non-Dutch nationality)
Provincial legal order	Government of province	All residents of the relevant province (including non-Dutch nationality)
Municipality legal order	Local government	All residents of the relevant municipality (including non-Dutch nationality)
School	Principal / board	Members of the school (teachers, students, board)
Classroom	Teacher	Members of the school (teachers, students, board)
Family	Caretaker (Father / mother / older sibling / nanny / other family member / foster parent)	Members of the family

To find the laws for the community (B) and non-public laws (C), I want to engage in qualitative research interviews with children and adults.

[17] (1989) 12.1: 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'.
[18] See also Alderson (2008: 155), Morrow (2005: 151).

In 2004 I used qualitative research interviews to research the (legal) situation of child combatants. These research interviews took place in the Netherlands and in Rwanda, and were conducted with both civilians and military, children and adults. As an interviewer, I used the technique of the Socratic dialogue that I had been using before as a philosophy teacher. This led to pleasant discussions, and much novel information on both the child-adult distinction and the situation of child combatants in both cultural contexts.[19] In addition, it seemed that this way of doing research with children (engaging together in a dialogue, searching for the answer to a question),[20] solved many of the issues identified by childhood researchers who aim to do research *with* children rather than *on* children (Christensen and James 2008b, Mayall 2000: 248, Woodhouse 1994: 232).

I therefore propose to design a research methodology which combines the educational methods of inquiry-based science instruction (where teacher and student engage together in research activities)[21] and philosophy with children (a technique of engaging in research dialogue with children, on an equal footing),[22] to create a qualitative research methodology, engaging with children, and involved adults, in research on law.

[19] See: Hopman (2014), De Jong et al. (2014), Committee on the Rights of the Child (2015b), (Committee on the Rights of the Child 2015a).
[20] Cf. Kvale who argues that research interviews are often misleadingly referred to as dialogues, whereas often an interview is 'a one-way dialogue, an instrumental and indirect conversation, where the interviewer upholds a monopoly of interpretation' (2006: 483-4). Kvale suggest as an alternative the Platonic dialogue (which is another term for the socratic dialogue), 'a conversation where two persons understand each other, where it is not the will of the individual persons that matters but a law of the subject matter', involving 'an approximate egalitarian power distribution' (2006: 486).
[21] See for example Minner et al. (2010), Clark and Linder (2006), Cremin et al. (2015), National Committee on Science Education Standards and Assessment et al. (1996), Keys and Bryan (2001), Watts et al. (1997).
[22] See Lipman et al. (1977), McCall (2013), Nelson and Brown (1949), Vansielegem and Kennedy (2011), Areeda (1996), Matthews (1995).

Empirical test: case studies

The proposed theoretical framework and methodology have to be tested through field work, to see if they do in fact lead to greater understanding of violations of children's rights in different cultural, social and political contexts (granting that law is more complex and has to be understood in relation to social reality and locality (de Sousa Santos 2002: 58)). I intend to test whether it is in fact possible to capture the view of children in different cultural, social and political contexts in relation to their rights, and if this can be used to improve the concrete, local situation of children. Following Flyvbjerg, the point of the case studies is not necessarily to generate predictive theory and formal generalizations, rather it is to generate qualitative context-dependent knowledge, (and) in the hope to learn something from them (Flyvbjerg 2006). To this purpose I have selected the following case studies:

1. The child's right to education (art. 28, 29 CRC) in the Central African Republic and the Netherlands.[23]
2. The best interests of the child (art. 3 CRC) in the Turkish Republic of Northern Cyprus (TRNC) and the Netherlands.[24]
3. The right to be protected against sexual exploitation (art. 34, 35 CRC) in the United States: Massachusetts and the Netherlands.[25]

Taking into account that when cases studies are used to test theory, choices between cases 'must be largely governed by arbitrary or practical, rather than logical, considerations' (Eckstein 1975, quoted in Flyvbjerg 2006: 227), my reasons for choosing these particular case studies are:

- Their potential to provide new information about the wrongs from which children suffer (for each of the cases, there are indications that these children's rights articles are grossly violated in a certain state, yet they are under researched).
- Cultural, social and political diversity of different locations.
- The non-Dutch situations for their lack of presence in research and media:
    - the situation in CAR has been labelled "the forgotten crisis" by the UN (UN News Centre 2015)
    - in the TRNC, as internationally disputed territory, no studies of the situation of children's rights specifically in the TRNC have been conducted.[26]
    - In the US, there is little attention for the commercial sexual exploitation of children (CSEC), which has been argued to be due to a 'widespread societal disbelief concerning the nature, extent and severity of the CSEC within the United States' (Estes & Weiner 2001: 142). Part of this is connected to 'the arbitrary division between child and adult built into […] the CSEC paradigm' (Marcus et al. 2011: 154-55).

[23] To realize the research in the Central African Republic, I am working with Human Rights Watch and Unicef. For the research on the right to education in the Netherlands, I work with "Stichting in1school", "Stichting Hartverwarmendwijs", "Nederlandse Vereniging Voor ThuisOnderwijs (NVVTO)" and de Kinderombudsman.
[24] Both Defence for Children / ECPAT the Netherlands and UNICEF the Netherlands have indicated to be most interested in research results on this article, as they argue it causes them great trouble in their legal practice with children.
[25] The intention is to perform this part of the research together with Defence for Children / ECPAT the Netherlands.
[26] SOS Children's Villages, who run a village in the TRNC, argue that '[t]he political situation in North Cyprus has an effect on the lives of children. The fact that the country is not recognised means that international funding for projects is not always available' (2015). In the 2012 UN report on implementation of the CRC in Cyprus data about the TRNC is left out (Committee on the Rights of the Child (2012: 2))

- The non-Dutch situations for the practical reason that the researcher has local contacts in place. The particular relations with children's rights organizations such as for example UNICEF CAR, Cordaid CAR, Human Rights Watch, provide a potential for the research data to be of use to local partners, who have already expressed their interest.
- The Dutch cases because of practical reasons (as the researcher lives in the Netherlands) and because of strong connections of the researcher to Dutch children's rights organizations, such as Defence for Children / ECPAT the Netherlands and UNICEF the Netherlands. Through these connections, children's rights organizations will be able to directly use the data on children's rights violations uncovered during field research. It also opens up possibilities for publication of data on children's rights violations in popular media.

Concluding reflection on law for children

Based on both the theoretical framework, methodology and the field research, I intend to end the PhD thesis with an analysis of law for children. In answering the main question, "Can violations of children's rights, in different cultural, social and political contexts, be better understood if analyzed within a legal pluralist framework, taking into account the child's perspective and the relations of power inequality corresponding to the different legal orders surrounding children? And consequently, how can this understanding be used to improve the concrete situation of children?", will be related to the following theoretical considerations:

1. Literature review: the socio-legal position of the child in the international legal community

As has been argued in the introduction, children find themselves in an interesting socio-legal position; they are often positioned as a kind of possession of the parent, even though they have individual rights. They are positioned as citizens of the state, even though they are not allowed to participate fully as citizens (for example they are not allowed to vote). So, according to literature, are children citizens or legal possessions or legal subjects or something else? What is their relation to different laws over them? What is their relation to their rights?

Relevant scholarly works on the subject are by philosophers Archard (2004), Schapiro (1999) and Worsfold (1974), who question the meaning of the concept of childhood in relation to the child's legal position. In law, interesting work has been done on (justification of) children's rights, such as work by Alston and UNICEF (1994), Freeman (2012), Hanson (2012), Liebel (2012). In sociology, several scholars discuss the social position of the child in the international community, such as James et al. (1998), James and Prout (2015), Jenks (1996). I am hoping to connect these works to works in philosophy of law and political philosophy that deal with the subject of the individual's position in relation to the legal order, in particular contract theory (Hobbes (1996b), Rousseau (2002), Kant (1996b) Kant (1996a)), combined with the critique of social-legal power as expressed by Foucault (2001) and Nietzsche (1998).[27]

2. A philosophical analysis of children's rights, based on the three case studies

Although I chose three specific children's rights articles for the case studies, I keep in mind what Nigel Cantwell, one of the authors of the CRC, wrote, namely that all the rights in the CRC are indivisible and interrelated, and no single right can be taken alone (Cantwell 1997: 22). Some first thoughts on the interconnection between the three case studies:

The idea is often expressed that (the right to) education (CRC art. 28 and 29) empowers children. It is understood as having a double dimension 'both as a right in itself and as an indispensable

[27] Nietzsche does not directly relate the individual to its position in the legal order, rather he perceives individual morality as being the result of imprinting of values by means of force, upon people subjected to the few in power. I think his analysis of the 'genealogy of morals' is relevant for understanding the socio-legal position of the child, which is the position of the disempowered, who during childhood is told how to behave in the social world in which he or she is born, conditioning the child according to existing social and legal rules. To Foucault, social and legal power serve to make people capable of living within the law and of providing for his own needs. On the level of society this happens through discipline, which produces 'subjected and practiced bodies, 'docile' bodies. Discipline increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience)'. This 'political anatomy' is at work specifically in education, ultimately creating a natural body that is the target of mechanisms of power, manipulated by authority. The pedagogical practice in particular is a period of disciplinary time, a time of training, detached from the adult time. Education embodies 'the theme of an [authoritarian] perfection towards which the exemplary master guides the pupil [...] mark[ing] the gradual acquisition of knowledge and good behaviour [...]' ((Foucault 1977: 138, 46-47, 54-55, 59, 61)). I will investigate into whether this notion can be applied to understand the child's right to education specifically and the socio-legal position of the child in the international legal community in general.

means of realizing other human rights', in a 'both protecting and empowering way' (Verheyde 2006).[28] However, children do not actually have a say in whether or not they want education, and what this education should consist of. Education is, amongst others, a means of installing certain beliefs and social habits in children, with regard to the socio-legal world, a system of beliefs and habits that is usually prescribed by state government. It is empowering in the sense that it enables children to take up a certain valued position within the social world. As Karagianni et al. point out: '[e]ducational programs cannot be seen in strict educational terms, as they evolve at the center of the social fabric and are directly related to the social values and relationships developed within the society' (2013: 92). Surely, education is argued by adults, and governments in particular, to be in the child's best interest. The "best interests principle" (art. 3 CRC) possibly reinforces a subject/object relation between adult and child, since the adult finally decides what is in the best interests of the child – which stands in stark contrast to the "child's rights to participation" (art. 12 CRC). Commercial sexual exploitation of children (CSEC) is probably one of the clearest examples of what is commonly judged not to be in the best interests of the child, a possibility for which social and legal protection of children are deemed essential (O' Connell Davidson 2005: 5). In dominant discourse on CSEC, agency of the child is often completely denied (Ibid 2005: 59). As Muntarbhorn has argued, 'in some cases, children are to be protected absolutely irrespective of their consent' (2007: 25).

The paternalistic stance of all three of these normatively informed rights, which are ultimately depending on adults who decide through positive enforcement of the desirable (e.g. through design of the educational curricula) and the elimination of the undesirable (e.g. the protection against CSEC), is argued by some to be harming the child to the point that children become 'harmed by the fact that they are socially imagined as objects, without subjectivity or agency' (Davidson 2005: 59), thereby defying the goals formulated as the end of children's rights in the preamble of the CRC.[29]

[28] See also: Karagianni et al. (2013: 83-4).

[29] Namely, to have a child developing his or her personality harmoniously, to prepare the child for living an individual life in society, ultimately to have 'justice, freedom and peace in the world' (1989: preamble).

Expected results

In short, I am expecting the research to produce following results:

- A new theoretical framework for the researching and understanding of children's rights violations in different cultural, social and political contexts.
- A new methodology for capturing the child's perspective on children's rights and the relations of power inequality corresponding to the different legal orders surrounding children, correlated to the theoretical framework.
- An understanding of, and data on, unequal power relations, especially adult/child relations, in relation to children's rights.
- Data on specific children's rights violations in specific communities (CAR, TRNC, Massachusetts, the Netherlands).
- A proposal for how the results of the study; the theoretical framework, methodology and the possibly resulting more profound understanding of children's rights violations can be used to improve the concrete day-to-day situation of children.

- Three interim reports on the three mentioned case studies.
- Several articles both in academic journals and popular media.
- A PhD thesis

In addition, I will engage in many valorisation activities, spreading the research and trying to make the process and its results as worthwhile as possible, amongst others by: posting short videos on the website (www.childrensrightsresearch.com), working with Defence for Children / ECPAT to realize child participation (including ways of listening to children in relation to the organization's activities), campaigning to raise funding and awareness for the research, organizing educational activities such as a highschool project week on the UN, human rights and children's rights, teaching future teachers (Pabo) at the HvA, Fontys Tilburg and UPvA, engaging in public debate as much as possible.

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Chapter 3: Conclusion, discussion and recommendations

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Background and motivation

During my studies I have always enjoyed the exercise of the mind and simultaneously, perhaps more importantly, I have been looking for ways to use my intellectual talent to help society. The determination to work for a better society is, in my opinion, best voiced in the words of Hesse's Joseph Knecht in "The Glass Bead Game" (1943);

> 'Permit me to clarify the situation by a metaphor. A man sits in an attic room engaged in a subtle work of scholarship. Suddenly he becomes aware that fire has broken out in the house below. He will not consider whether it is his function to see to it, or whether he had not better finish his tabulations. He will run downstairs and attempt to save the house. Here I am sitting in the top story of our Castalian edifice, occupied with the Glass Bead Game, working with delicate, sensitive instruments, and instinct tells me, my nose tells me, that down below something is burning, our whole structure is imperilled, and that my business now is not to analyse music or define rules of the Game, but to rush to where the smoke is'.

Unlike Knecht, I feel that my way to contribute to stopping the fire lies in academic research. I feel that academic discipline, and specifically interdisciplinary research into children's rights, allows me to contemplate situations, provide information for both academics and non-academics, to critically analyse society and provide impetus for change. I feel that here my talents will be of most use.

During my studies I have always been most interested in children. Even if all people learn, children seem most open to education (in its broadest sense, and not only in schools). Therefore I believe the key to ending human suffering lies in the education of children. If they grow up well, we might be able to create a peaceful society in which a community can live without fear.

After my MA research project on child combatants, I was hired by UNICEF the Netherlands to write a research report on child combatant's in the Netherlands (using data and results from my MA research) (De Jong et al. 2014). This report led to some uproar in society[30] and finally its most important recommendations were followed by the UN Committee on the Rights of the Child in their concluding observations (Committee on the Rights of the Child 2015a). To continue this kind of cooperation, Defence for Children/ECPAT the Netherlands are a partner to the current project.[31]

Secondly, I have always enjoyed teaching and would like to continue teaching insofar as it relates to my research. To this purpose, I work together with Wetenschapsknooppunt Brabant who offer me means and room to create my own educational projects.[32]

Lastly, to illustrate my motivation and determination, I would like to point out that for my MA research on children's rights, to be able to afford the field research, I raised € 3.780 through crowdfunding. From this experience I learned how crowdfunding, a financial contribution, binds people to a research project. They actually follow the research throughout the process, and so the research has a crowd, which I believe increases the chance for social impact. Therefore I chose to repeat this successful experience in my current research project. So far I have raised more than € 20.000 through crowdfunding. In addition, to fund the current PhD research, I develop and carry out several educational projects for different

[30] Amongst others: van Dijk (2014).
[31] Concretely, this means I work one day a week at their office (Kinderrechtenhuis Leiden). I organize study-lunches in which we discuss new children's rights research, they help me with contacts etc. and are interested to publish reports on each of the case studies.
[32] I teach mostly on how children can engage in "scientific research" (see literature on inquiry-based learning). Together with the Wetenschapsknooppunt Brabant I have submitted a research proposal, and received funding to train and supervize Pabo students to do research on inquiry-based learning. This means that these students are going to do research with their students at primary schools. The money I make by leading this project goes to my own research.

institutions. For this work I do not get paid, but a sum is transferred to my research project. In this way, up until today and including projects that extend until December 2016, I have raised more than € 70.000.