

CHILDREN AS RIGHTS-HOLDERS AND FULFILLMENT OF THE RIGHTS OF STREET-CONNECTED CHILDREN WITHIN RIGHT BASED APPROACH

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ABSTRACT

The destiny of a country depends directly on how its children are nurtured to fulfill the requirements of its society. Human rights acknowledges that every single human being is entitled to enjoy his or her rights without distinction. The study focuses on rights of street children which is still a daunting challenge in the world despite available international laws, conventions, treaties and policy in the human rights law arena. The Study takes a qualitative approach and both primary and secondary data will be used to analysis the issue. This paper exhibit the street children's rights with right based approach and it intends to demonstrate the immediate need for rights for the protection of the street children under the United Nations Convention on the Rights of the Child and identifying the rights which are most at risk for children living or working on the streets and the responsibilities of state authorities. Further, the research intends to discuss what more needs to be done, to ensure that the rights of street children are realized and fulfilled internationally. The main Findings of the study reveal that the state parties have failed to take necessary steps to ensure the effectives implementation of the available laws and mechanism to address the root causes of the problem such as poverty and vulnerability. Further, the United Nations Convention on the Rights of the Child, which most of states have ratified, makes it binding for states to provide wide-ranging care to all children below eighteen years. But the implementation of the act is very slow. Recommendations of the study emphasizes that enhanced household protection systems are required for children from vulnerable and poor families. Furthermore, physical, sexual and emotional abuse of children needs strict and swift responses from law enforcement authorities and judiciary.

Keywords: *Street Children, Right to Protection, Rights-Based Approach, Convention on the Rights of Child, Law Enforcement Mechanism*

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1. INTRODUCTION

Article (1) of the *Convention on the Rights of the Child* defines a 'child' as a person below the age of 18, unless the laws of a particular country sets the legal age for adulthood younger." (Unicef, 2015) In complete fragmented sense, Street Children should be protected under the above article. "UNICEF defines them as "children who live in the streets" (Hilary, 2011) and "for whom the street (in the widest sense of the world, including unoccupied dwellings, wasteland, etc.) has become his or her habitual abode and source of livelihood; and who is inadequately protected, supervised or directed by responsible adults" (Ibrahim, 2012) They "spend all or most of their times on the street" (Ibrahim, 2012) and thus "lack supervision, protection or guidance which make them vulnerable to a wide range of health and psychological hazards." (Ibrahim, 2012)

Furthermore, Human Rights Council Resolution declares the States '... to ensure a holistic child rights and gender-based response to the phenomenon of children working and/or living on the street....' (HRC), "Human rights are the rights people are entitled simply because

they are human beings, regardless of their citizenship, nationality, race, ethnicity, language, sex, sexuality, abilities or any other status. The rights discourse shares common concepts such as justice, equality, solidarity, respect and dignity with most religions and other societal, philosophical and cultural frameworks. Rights should therefore not be seen as something 'new' or 'dangerous': they are just about taking existing principles of common humanity and making them stronger. This strength comes from the 'arch' relationship between duty-bearers fulfilling rights on the one side and rights-holders claiming their rights on the other side. We need to work with both sides to prepare and strengthen them in this relationship so as to build strong families, communities and societies." (Wernham, 2007) Then, we can protect our children and decrease instances of leaving children homes and ending of in streets.

This study observe the effectiveness of the international laws enacted to ensure the protection of the rights of the street children is extensively studied and this study intends to demonstrate the immediate need for the right to protection of street children under

the United Nations Convention on the Rights of the Child and identifying the rights which are most at risk for children living or working on the streets and the responsibilities of state authorities. Further, the research intends to discuss what more need to be done in order to uplift the rights of street children in globally.

2. METHODOLOGY

This study takes a qualitative approach. Both primary and secondary data will be used to analysis the issue. This research is performed through an extensive analysis of published literature related to the research topic. Doctrinal legal analysis of primary and secondary legal material is used to identify the legal context and statutes relevant to the research questions.

Thus, analysis of the legal instruments both national and international, will be conducted to derive information. The primary sources consist of relevant legislatives and case law. Secondary sources will be the text books, research articles, and journals etc.

3. DISCUSSION

3.1 Children as rights-holders and gaps in respect for and fulfillment of the rights of street-connected children

Children are entitled to all human rights. These rights are collected in the United Nations Convention on the Rights of the Child (CRC). The CRC was adopted in 1989 and enacted in 1990. It is the most broadly and speedily ratified human rights treaty in history. Further, its two Optional Protocols, Namely; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was adopted in 2000 and enacted in 2002. Likewise, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted in 2000 and entered into force in 2002. Under international law, through the Convention on the Rights of the Child (CRC), to which almost every country has now committed themselves.

The rights in the CRC can be gathered in certain ways. But in reality, they are all linked together: and are indivisible and interdependent. Further, all children have the same rights - irrespective of

their background and the context they live in – and are ‘rights-holders’. But children in streets have many of their rights violated. Therefore, the “need to start thinking about our work with children in street situations in terms of ‘rights’ rather than ‘needs’ and how we can bring the two sides of the rights-holder / duty-bearer arch together” (Wernham, 2007)

3.2 Rights-Based Approach (RBA) to Street Children

Internationally, there is an increasing emphasis on a rights-based approach to the realization of children’s rights issues (Craissati, 2007) and a rights-based approach serves as a conceptual framework for the realization of child rights which is based on human rights standards. (Gready, 2005)

“A child rights-based approach is more than just listing articles of the CRC, or working on particular articles in isolation. It is about treating children as people rather than pawns – with dignity and respect for their abilities. We can do this by remembering the 5 umbrella rights of the CRC at all times: the right to life, survival and development; non-discrimination; best interests of the child; participation and implementation /

resources. In order to ensure this dignity, the way we achieve the rights in the CRC is just as important as the end goal.” (Gready, 2005)

Street Children are the same as all children in the world. Adopting a rights-based approach to street children leads to treating them as people rather than as pawns. This approach means that all the people must consider it is their right to live, survive, develop, non-discrimination, best interests, access to resources and participation in all actions, activities, policies and programmes.

A rights-based approach demonstrates different fundamental principles. There are universality, non-discrimination, equality, indivisibility, inter-dependence, inter-relatedness, participation, rule of law and accountability. There are closely linked to human rights standards and examined below.

3.3 RBA Principle 1:

Accountability and Rule of Law

Accountability and the respect of the rule of law are some of the fundamental principles of a rights-based approach to street children. This principle focuses on understanding a right process, by expounding who the “right holder”

and the “duty bearer” is. It reinforces the rights holder to claim her/his rights while increasing the level of accountability of the duty bearer.

Who are “Duty-bearers are the actors collectively responsible for the realization of children’s rights and are accountable if those rights are not realized. When a right has been violated or insufficiently protected, there is always someone or some institution that has failed to perform a duty. Understanding and identifying who has responsibility,

who is accountable towards children and why failures have occurred, is essential to be able to improve and develop appropriate responses, mitigate harm caused and prevent future breaches or deprivations of rights.” (UNDG, 2002)

Figure: 2 Right Holders and Duty Bearers



[Source: Thesis, J., Brief Introduction to Rights-based Programming, Save the Children, August 2003]

In relation to the right to protect of street children, the above figure indicate how the street children as the rights-holders and corresponding duty-bearers can

work for the protection of children from street situation. When the street children’s rights are violated, the duty bearers are accountable. States are the foremost duty-bearers and are

accountable for respecting, protecting and fulfilling children's rights in their countries. Under International Child Rights Law, states have a three type of obligations as discussed below.

Further, non-state duty-bearers also have some obligations to protect the child rights. Ljungman (Ljungman, 2004) demonstrated non- state duty bearers as below.

- Primary duty-bearers: Parents for children, teachers for students, police for crime suspects/witnesses/victims, doctors/nurses for patients, social-workers for clients, employers for employees, etc.
- Secondary duty-bearers: Institutions and organizations with immediate jurisdiction over the primary duty-bearers e.g. school principals, faith-based /community organizations, hospital administrations, etc.
- Tertiary duty-bearers: Institutions and organizations at a higher level / more remote jurisdiction (NGOs, private sector organizations, businesses), etc.
- External duty-bearers: Other countries, institutions, organizations with no direct involvement e.g. UN, INGOs,

Security Council, African Union/European Union etc.

In a nutshell, based on the above and other legal instruments, the principles of accountability and rule of law entail that the state parties and other non-state duty bearer are required to take all appropriate measures to protect the rights of street children.

3.4 RBA Principle 2: Best Interests of the Child

The “best interest of the child” is fundamentally developed to place a limit to the authority of adults and/or guardians over children. (Schoenholtz, 2011) The principle is based upon the recognition that decisions on behalf of a child can only be made on conditions of a child's lack of experience and judgment. As a most vulnerable group street children face different challenges on the street. At the same time they have their own understanding about things and ability in dealing with the challenge. The CRC stated that children should be with their parents or family, unless it is in their best interest not to.

“In relation to the intervention, the inclusion of the best interests of the child in a rights-based approach serves as a reference

point for any assessment of action, specifically, in determining solutions for street children whose lives weigh in the balance of meaningful governmental action”{ (Lansdown, 2005) (Seitles, 1997)} A good illustration here is that, in order to protect the right of street children ,there should be a speedy mechanism to remove street children from the street. Consequently, this principle of a rights-based approach cannot be complete without careful analysis of the street children’s participation in all phases.

However, conventions, policy and legal instruments provide a clear definition of what “the best interest of the child” constitutes. This is due to the concern that best interests may be different from child to child as well as among parents. These instruments stress that every action to be taken concerning the child in either of the alternative care options must consider the best interests of the child as a guiding principle. (Gebreyosus, 2014) As an example, Article 3 (1) of the CRC provides that in every action affecting children undertaken by social welfare institutions, administrative authorities or courts of law the best interest of the child shall be a primary consideration. The highlighting of a primary

consideration of the best interest of the child in this regard is with a view to safeguard care and protection essential for the wellbeing of the child through considering the rights and duties of parents, legal custodians, caretakers or other individuals.

3.5 RBA Principle 3: Participation

Children’s views are most often overlooked by the government or the community. (Mukherjee, 2005) “Several provisions in the Convention on the Rights of the Child reflect children's right to participation. Participation is one of the guiding principles of the Convention, as well as one of its basic challenges. Article 12 of the Convention on the Rights of the Child states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken in their regard—within the family, the school or the community.

The principle affirms that children are full-fledged persons who have the right to express their views in all matters affecting them and requires that those views be heard and given due weight in accordance with the child's age and

maturity. It recognizes the potential of children to enrich decision-making processes, to share perspectives and to participate as citizens and actors of change. The practical meaning of children's right to participation must be considered in each and every matter concerning children." Right to participation principle represents a highly significant recognition of the need to give street children a greater say in their own lives and they have their own viewpoint concerning the issues regarding street situation.

The right to participation is an internationally and regionally recognized human right. As examples; Article 18-21 and 27 of the Universal Declaration of Human Rights; Article 18-21 and 22 of the International Covenant on Civil and Political Rights (ICCPR); Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Street children have the right to participate in the decision-making process in his or her family, community and at national and international levels. In response to violation of the right to protection of street children, a meaningful participatory approach will help to focus on the long and intermediate responses rather than only immediate responses.

In a rights-based approach to street situation, street children are considered as having separate needs. They need to have a voice on matters that affect their lives. They need to be allowed them to express their view. As observed by Griesel et al. (Griesel, 2002) the CRC conceives of the right of children to participate in two senses: the possibility of children to engage with the social and physical world around them and their opportunities to have a voice in the formal decision making process. Consequently, participation right is an important aspect in this right based approach.

3.6 RBA Principle 4: Non-Discrimination

Non-Discrimination is one of the fundamental principles in the rights-based approach. It discards any kind of discrimination of a child based on his/her parental or legal custodians or status. According to this principle, street children have the right to be treated as all other children in the society, country and world. This principle focuses on the most underprivileged groups who suffer violations of their rights. Identifying those who are in utmost need of support and suggesting solutions, guidelines or policies is essential.

A rights-based approach safeguards street children from discrimination on the bases of their family status or homelessness. This principle of rights-based approach is included in all human rights instruments. The principle of Right to Protection of street children entails the formulation of guidelines, policies, actions or laws that will reach out to those children who are overlooked in the mainstream society. As per this principle, all children are equal human beings. Therefore, street children are entitled to the right to be protected from harms without any kind of discrimination. Article 2 of the CRC consists of a non-discrimination clause. It requires that State parties should protect and ensure the rights of the child stated in the Convention. Article 2 (2) of the CRC puts the responsibility of the state parties to take all appropriate measures to ensure that the child is protected from any kind of discrimination. Hence, states are obliged to offer equal rights and opportunities to all children including street children.

Article 19 of the CRC grants the child the right to be protected from abuse and neglect. It urges the state to provide full protection for children against all forms of harms. In general, as per the rights-based

approach perspective, all the state parties are primarily responsible for realizing the rights of the street children's rights without any kind of discrimination.

3.7 RBA Principle 5: Survival and Development

Child survival is inextricably linked to child development. The right to maximum survival and development speaks to a continuum that begins at maximum survival and progresses to an endpoint represented by the optimum development of the child. Taking into account the multiple problems that street children encounter, the government should ensure that street children who live and work on the street are able to the maximum extent possible, to survive and develop. (West, 2003) The rights-based approach provides a dynamic point for considering the focal threat to survival and development of street children. The principle of survival and development is threatened when street children encounter violation of the right to protection. Violation of right to protection has a profound impact on the survival and development of children. According to CRC, a core convention of children's rights consists of the rights to survival and development

with psychosocial, emotional, cognitive and cultural aspects.

They also entail that street children must live in the appropriate caring, protective and free environment to realize their potential. Making such an environment is mainly the obligation of the duty bearers. It also focuses on the consideration of accessibility so as to realize the right to basic services and equity of opportunity for all children to achieve their rights. This principle is not only about the right to be protected from any kind of harm, but also about the right to a good quality of life, health and education etc which affords children the opportunity to develop

their abilities. This principle integrates all other rights-based approach principles that were deliberated earlier. Therefore, it functions as an umbrella for all the rights of children. The five umbrella rights are demonstrated in the figure below in the form of the 'Table Leg Test'. This demonstrates how the best interests of the child, non-discrimination, participation are the foundation to achieve the ultimate goal of the CRC: the right to life, survival and development. The 'Table Leg Test' can act as a simple reminder in the design and implementation of any proposed activities Wernham, M, (2007).

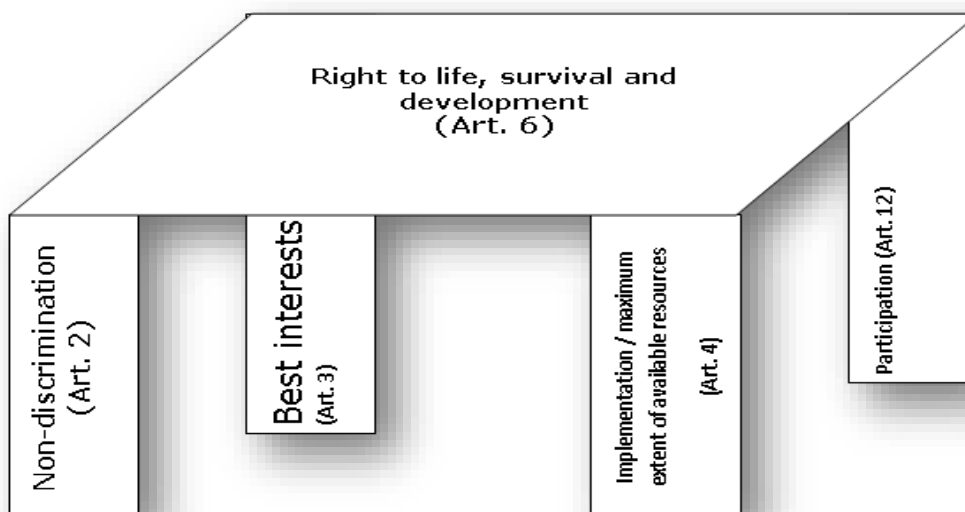


Figure: 3 Table Leg Test

According to the 'Table Leg Test', if any of the legs is missing, the activity or programme is not stable. Thence, every principles of the right based approach is vital to protect the street children from any kind of harm.

4. CONCLUSION

The study observed that these children are neglected by the public and government, street children are deprived of education, proper nutrition and medical care. Sexual exploitation of street children by residents and strangers (foreign tourist) alike is widespread. When we talk about equality, the study observed that these children are not entitled to equal opportunities. Therefore, it is the duty of all those who work for the welfare of children to make all efforts to move in this direction, in an effort to ensure that equal rights and possibilities are given to all the children in global, without any discrimination.

According to the Right Based Approach the Child Right Convention insists on a holistic approach and it further states that legislation should not fractionally deal with the rights of the child, but as a whole. The guidelines given by the Child Rights Committee clearly

says that equal attention should be concentrated upon every right containing civil and political, as well as economic, social and cultural rights. The holistic nature of CRC has placed the protection of the rights of the child within the mainstream of International Human Rights Law.

In notion and reality, the implementation of these instruments and legislation are yet to be enforced. The implementation of these instruments and legislation require perpetual legislative, administrative, policymaking, structural, educational and other measures. As frequently mentioned in literature, the law to capture and punish criminals and give ample protection to children is already in place. The difficulty lies wholly in its enforcement. Therefore, it is important to take necessary measurements to monitor the law enforcement authorities so that they take practical steps to address this problem.

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