

Street Children, Legal Identity and the UN General Comment on Children in Street Situations

Introduction

In the morning of July 23, 1993, The Candelaria Church, in Brazil's Rio de Janeiro, was the scene of an unprecedented horrific death squad operation against street children in Brazil.¹ Police officers, opened fire on a large group of children sleeping on the steps of the church, killing 8 children and wounding many more.²

The motives for the "Candelaria Massacre" remain a mystery – some sources claim the police were seeking revenge for an earlier confrontation with the youths; while others claim that the police were paid by local business owners to murder the children in order to "clear" the area.³

Following the Candelaria Massacre in Brazil, there was a surge of international interest and support for street children.

UN General Assembly Resolutions in 1993 and 1994 and a 1994 Resolution of the UN Commission of Human Rights all called upon the international community to improve the situation of street children, and to ensure greater awareness and more effective action to solve the problem of street children.⁴ However, during the last two decades the issue of street children has been marginalised in international development debates and national plans of action.⁵

What is a Street Child?

The term "street child", used by the Commission on Human Rights in 1994, was developed in the 1980s to describe "any girl or boy [...] for whom the street (in the broadest sense of the word, including unoccupied dwellings, wasteland, etc.) has become his or her habitual abode and/or source of livelihood, and who is inadequately protected, supervised or directed by responsible adults."⁶

¹ <http://www.nytimes.com/1993/07/24/world/gunmen-said-to-be-police-kill-7-street-children-in-rio.html>

² <http://www.coha.org/remember-brazils-candelaria-massacre/>

³ <http://www.ibtimes.com/candelaria-church-massacre-brazil-marks-20th-anniversary-police-murders-homeless-street-children>

⁴ <http://www.un.org/documents/ga/res/48/a48r136.htm>,
<http://www.un.org/documents/ga/res/49/a49r212.htm>,
http://mirror.unhabitat.org/downloads/docs/1381_37085_WR15.htm

⁵ <http://streetchildren.org/uncrc-to-develop-general-comment-on-children-in-street-situations/>

⁶ <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>, p. 9.

Today, the term “street children” is understood as a socially constructed category that, in practice, does not constitute a homogeneous population, making the term difficult to use for research, policymaking and intervention design.⁷

Indeed although some estimates of street children run as high as 120 million worldwide, according to a UN study global estimates of the number of children in street situations have no basis in fact.⁸ As early as 1994, criticism emerged from Judith Ennew on behalf of Save the Children. She said that numbers of street children often were manipulated, inflated and even fabricated by NGOs and donors for funding purposes

However, there is general agreement that the number is expected to increase amid rising inequalities and climate change around the globe. The number of street children fluctuates according to socio-economic, political and cultural conditions, including growing inequalities and patterns of urbanisation.⁹

The characteristics of children on the streets are very diverse. While in many cities, children in street situations are predominantly male, in some places, girls outnumbered boys (for instance, a study showed that in Bamako, Mali, the large majority of children counted were boys, while in Accra, Ghana three out of four were girls).¹⁰ Some children are born on the street, while others move onto the street only in adolescence.

Causes that lead to street children.

In a report by the OHCHR, which was submitted pursuant to Resolution 16/12 of 24 March 2011, there was questioning of the traditional view that *economic poverty and family breakdown or abandonment of children were in combination the main causes to street children*. The report indicated that the causes were more nuanced. While poverty can be an important pathway to the street, the great majority of children who live in economic poverty do not end up on the streets.

Most families of street-connected children have experienced persistent discrimination, poverty and social exclusion within societies where inequalities are high and/or growing. Few have received economic support, child-care assistance, access to mental health or drug rehabilitation services. Unstable, often violent circumstances can weaken children’s family connections as well as their access to adequate schooling, friendships and other relationships, weakening their connections to society. Other pathways to the street include HIV/AIDS, early and forced marriages, natural disasters, war and internal displacement.

⁷ <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>, p. 10.

⁸ <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>, p. 10.

⁹ <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>

¹⁰ <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>, p. 11.

These so called “*push*” factors (*ie causes that encourage or force children onto the street*) can be understood within a framework of significant income inequalities, a poor socio-cultural context and inadequate social protection that together deprive children of many of their rights.

On a smaller scale there are the so called “pull” factors, which can help make the street attractive to a child. These include spatial freedom, financial independence, adventure, city glamour and street-based friendships or gangs.

Challenges street children face

Street children suffer multiple, repeated, violations of their rights. Children in street situations are at high risk of suffering violence, particularly torture and inhuman or degrading treatment or punishment. This results in psychological distress to profound trauma. Violence on the streets include daily psychological violence through stigmatisation and intimidation of street children; random physical and/or sexual violence by other street inhabitants or members of the public; expressions of violence within street gangs; by organisers of forced sex-selling or vagrancy; through forcible police round-ups; premeditated rapes and extrajudicial killings.¹¹

Girls are at special risk: in addition to negative social attitudes, they endure sexual abuse and exploitation; face early pregnancy and enhanced responsibilities as mothers of a new generation of street children; and still too often, they end up in detention for deviant behaviour “for their own protection”.¹²

The UN Committee on the Rights of the Child noted in its 2008 report to the General Assembly:

“Children with disabilities, specifically physical disabilities, often end up on the streets for a variety of reasons, including economic and social factors. Children with disabilities living and/or working on the streets need to be provided with adequate care, including nutrition, clothing, housing, educational opportunities, life-skills training as well as protection from the different dangers, including economic and sexual exploitation. In this regard an individualized approach is necessary which takes full account of the special needs and the capacities of the child. The Committee is particularly concerned that children with disabilities are sometimes exploited for the purpose of begging in the streets or elsewhere; sometimes disabilities are inflicted on children for the purpose of begging. States parties are required to take all necessary actions to prevent this form of

¹¹ <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>, p. 13.

¹² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/131/63/PDF/G1113163.pdf?OpenElement>, p. 9.

exploitation and to explicitly criminalize exploitation in such manner and take effective measures to bring the perpetrators to justice.”¹³

In the same report, the Committee made further notes in relation to discrimination of street children. It held that it is quite common that national criminal codes contain provisions criminalising behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as status offences, are not considered to be such if committed by adults.¹⁴ These discriminatory provisions in national law lead to further challenges for street children, as they are disproportionately punished for these, otherwise not unlawful, acts.

For many children on the street, the State is not a protector but the main perpetrator of violence, by commission or omission. Street children are often labelled as criminal gang members that should be taken off the streets for the sake of security. Such systematic repressive responses from States compromise international human rights standards, besides being ineffective and costly.¹⁵

In addition to violence, discrimination and stigma, children in street situations lack basic rights, such as access to education, health care, food and adequate living conditions. They can easily be subjected to exploitative work, drugs and harsh punishment for small offences.¹⁶ Street children face serious health problems, including HIV/AIDS and sexually transmitted diseases.¹⁷

Participants in a human rights panel on street children in 2011 noted that there is an increased risk for these children of being recruited by armed groups, but also for demobilised child soldiers to end up living on the street.¹⁸

Legal identity

Many street children have not been registered at birth. Such lack of registration results in the lack of documentary evidence often required to secure recognition of their legal identity, family relationship, nationality and ensuing rights. With a legal identity, an individual has

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https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/63/A_63_41.pdf, p. 51.

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https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/63/A_63_41.pdf, p. 54

¹⁵ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/131/63/PDF/G1113163.pdf?OpenElement>, p. 5.

¹⁶ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/131/63/PDF/G1113163.pdf?OpenElement>, p. 4.

¹⁷ Idem.

¹⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/131/63/PDF/G1113163.pdf?OpenElement>, p. 6.

improved access to essential services, such as healthcare, education and social welfare. Birth registration is a fundamental human right enshrined in Articles 7 and 8 of the 1989 UN Convention on the Rights of the Child. Birth registration serves as a prerequisite to the realisation of other human rights integral to a child's development and well-being. It is a crucial first step towards building a protective environment against abuse, exploitation, violence and statelessness.¹⁹

Without legal identity, street children can be more vulnerable to child labour and exploitation. Moreover, every year, 100 million young people are affected by disasters. Birth registration before, during and after emergencies can help protect girls and boys from violence, abuse, neglect and exploitation. Not being able to prove who and how old you are can make it difficult to get a job in the formal sector, which is especially relevant in an increasingly modern and urban world.²⁰ A lack of legal identity predicts and sustains social, economic, and political exclusion. The right to a legal identity is fundamental to inclusive development.

International legal standards

The 1989 Convention on the Rights of the Child was adopted by the UN General Assembly on 20 November 1989 and entered into force in September 1990.²¹ It now has been ratified by every country in the world, except the USA.²²

Although the Convention does not expressly mention the rights of street children, all provisions in the Convention apply equally to them. The Convention covers a whole range of rights – civil, political, economic, social and cultural; establishes a framework of duties for different actors; marks a milestone in recognising all children as rights holders and reaffirms the general principles of best interests of the child, non-discrimination, participation, survival and development as the framework for all actions concerning children.²³

The Optional Protocol on the sale of children, child prostitution and child pornography²⁴, and the Optional Protocol on the involvement of children in armed conflict²⁵ are both relevant to street children as well, as these children are particularly vulnerable for the risks described in the two optional protocols.

Several General Comments of the Committee on the Rights of the Child make express reference to the situation of children living and/or working on the street. General Comment No 13 (2011) on the right of the child to freedom from all forms of violence, identifies

¹⁹ <http://www.childrightsconnect.org/child-rights-issues/universal-birth-registration/>

²⁰ <http://www.trust.org/slideshow/?id=b06cae53-826a-46f5-a3fa-5618ba7934d1>

²¹ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

²² <http://www.un.org/apps/news/story.asp?NewsID=52129#.VjM67berTIU>

²³ <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>, pp. 8-9.

²⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

²⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

children in street situations as groups of children in potentially vulnerable situations which are likely to be exposed to violence.²⁶

General Comment No 12 (2009) on the right of the child to be heard, mention that the voices of children have increasingly become a powerful force in the prevention of child rights violations, including providing health services and education to street children which are mentioned as good practice examples.²⁷

General Comment No 10 (2007) on children's rights in juvenile justice, expresses concern of the provisions in many national criminal codes criminalising behavioural problems of children, such as vagrancy, truancy, runaways and other act, which often are the result of psychological or socio-economic problems. It notes that it is particularly a matter of concern that girls and street children are often victims of this criminalisation. Behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.²⁸

Human Rights Council Resolution 16/12 of 12 April 2011 deals specifically with the protection and promotion of the rights of children working and/or living on the street.²⁹ It invited the Office of the High Commissioner for Human Rights to conduct a study on challenges, lessons learned and best practices in a holistic, child rights and gender-based approach to protect and promote the rights of children working and/or living on the street.³⁰

The legal standards above are some examples of the international legal framework specifically directed to children, but it must be noted that all human rights legislation provides equally to children as well as adults.

Prevention strategies

According to the Special Representative of the Secretary-General on Violence against Children, national legislation should be enacted to prohibit all forms of violence against children, everywhere and at all times, and status offences, such as begging, truancy and vagrancy, have to be abolished. It is also necessary to establish and make widely available safe, child-sensitive and confidential counselling for children working or living on the street and to provide reporting and complaint mechanisms to address incidents of violence.³¹

²⁶ http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf, p. 27.

²⁷ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>, p. 24.

²⁸ <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>, pp. 4-5.

²⁹ <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/126/92/PDF/G1112692.pdf?OpenElement>

³⁰ <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>, p. 8.

³¹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/131/63/PDF/G1113163.pdf?OpenElement>, p. 9.

National police have to be made fully aware of different issues involving street children, including juvenile justice matters and drug abuse. Police perception of street children plays a crucial role in shaping the response to the phenomenon; sensitisation about street children and their rights is therefore essential. As a positive example, Pakistan has taken a number of measures increasing awareness in the police leadership, including the establishment of five model child rights desks, the preparation of a police training manual on the juvenile justice system, and short courses and awareness-raising workshops for police officers on the rights of street children.³²

The reality of children living and working on the street needs to be put back on State's agendas. Simultaneous policies of inpatient and outpatient health care (especially reproductive health services) and support for education and reintegration programmes would provide space for street children and their families to redevelop.³³

Dialogue is the most relevant educational instrument to promote alternatives for children in the street.

Development of a new UN General Comment on the rights of street children

In June 2014 it was announced that the UN Committee on the Rights of the Child will develop a General Comment on Children in Street Situations.

This is an important step.

General Comment has the power to influence policy and practice at international, national and local levels to bring about positive change for the situation of children living and/or working on the street. It is an in depth consultative process.

It can be used as a framework for accountability, as well as for pushing for change in legislation. National and international courts can refer to General Comments to clarify legislative provisions and for an authoritative interpretation of rights.

The General Comment improves the implementation of the UN Convention on the Rights of the Child. It establishes new scope for treating street children as a specific area of attention, and for holding governments to account. The lack of a clear framework from the UN on street children's rights meant that responsible authorities worldwide have been unwilling or unable to close the policy gaps that street children continuously fall through.³⁴

It has taken time

³² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/131/63/PDF/G1113163.pdf?OpenElement>, p. 9.

³³ Idem, pp. 9-10.

³⁴ <http://www.theguardian.com/global-development-professionals-network/2014/jun/24/un-street-children-general-comment>

The announcement that a General Comment on Children in Street Situations will be developed comes two decades after the UN General Assembly for the first time called for such a General Comment. It is expected to be officially published in or before mid- 2016.

CONCLUSION

As we work together for the benefit of the vulnerable, from my work in child rights in Nigeria, I think one of the quotes from Maya Angelou

I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel.

4/11/15

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³⁵ With thanks to Vera Padberg for research.