

PROTECTING THE RIGHTS OF THE CHILD IN HUMANITARIAN SITUATIONS

CONTRIBUTING REPORT TO THE HUMAN RIGHTS COUNCIL RESOLUTION 34/16 BY: PATRICIA SUKORE (PATRICIA SUKORE FOUNDATION FOR WOMEN AND CHILDREN) Nigeria.

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INTRODUCTION

Definition of terms

The United Nations Convention on The Rights of the Child (UNCRC) defines a child as a “human being below the age of 18 years” unless under the law applicable to the child, majority is attained earlier.¹

The United Nations' 1989 Convention on the Rights of the Child, or CRC, is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. Its implementation is monitored by the Committee on the Rights of the Child. National governments that ratify it commit themselves to protecting and ensuring children's rights, and agree to hold themselves accountable for this commitment before the international community. The CRC is the most widely ratified human rights treaty with 195 ratifications. South Sudan and the United States are the only two countries which have not ratified the CRC. The CRC is based on four core principles, namely the principle of non discrimination, the best interests of the child, the right to life, survival and development, and considering the views of the child in decisions which affect them (according to their age and maturity). The CRC, along with international criminal accountability mechanisms such as the International Criminal Court, the Yugoslavia and Rwanda Tribunals, and the Special Court for Sierra Leone, is said to have significantly increased the profile of children's rights worldwide².

Humanitarian crises is a singular event or a series of events that are threatening in terms of health, safety or well being of a community or a large group of people; for the purpose of this report – Children – they are the population mostly affected by humanitarian situations mainly because of their age and vulnerability to exploitation, neglect and abuse.

Abstract

The United Nations Children’s Fund (UNICEF) recognizes that when an emergency strikes, whether a sudden onset natural disaster or an armed conflict, children require special protection to ensure their safety and well-being. The core commitments for children in humanitarian action constitute the UNICEF central policy on how to uphold the rights of children affected by humanitarian crises. In her report on the impact of armed conflict on children, the independent expert appointed by the Secretary-General in 1994, Graça Machel, called for an end to the targeting of children in armed conflicts.

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¹ United Nations Convention on the Rights of The Child

² Wikipedia https://en.wikipedia.org/wiki/Children%27s_rights#Convention_on_the_Rights_of_the_Child

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In the report, the independent expert highlighted the fact that millions of girls and boys were victims of killing, maiming, torture, rape, sexual exploitation, abduction, forced labour and other violations of the rights of the child in pre-conflict, conflict and post-conflict situations. She recognized that girls were more vulnerable, that the recruitment and use of children in armed conflict was a violation of international law, as were the attacks on and the military use of protected places that usually have a significant presence of children, such as schools, hospitals and homes. In addition, she emphasized that the fact that children were still being shamefully abused was “clear indication that we have barely begun to fulfil our obligation to protect them”.³

Humanitarian crises, including natural disasters and complex emergencies, compromise children’s rights to survival, development, protection and participation. Complex emergencies can undermine primary health care systems and physical infrastructure, jeopardizing child nutrition and health. Education, too, suffers; of the estimated 101 million children of primary school age not attending primary school, nearly 60 million live in the 33 countries currently affected by armed conflict.

The United Nations Convention on the Rights of a Child is an international document on the Rights of a Child, promoting Child’s Rights. Till date, 195 countries have signed up to the UNCRC with only 2 countries in the world yet to ratify. With this in mind, it is evident that almost all countries of the world are aware that every child possesses rights of their own which must be recognized and respected.

In this report we shall be discussing issues as regards protecting the rights of a child in Humanitarian situations and these are:

1. The main challenges in protecting the rights of the child in humanitarian situations.
 2. Examples of good practices undertaken to protect the rights of the child in humanitarian situations.
 3. Specific practices that aim to guarantee the right of the child to participate and to be heard (Article 12 Convention on the Rights of the Child) in humanitarian situations.
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MAIN CHALLENGES IN PROTECTING THE RIGHTS OF THE CHILD IN HUMANITARIAN SITUATION

1. One of the main challenges in the protection of the rights of children in humanitarian situations is the lack of localized government institutions set up to work in concert with International humanitarian institutions to curb the incidence of violations of the rights of children.
2. When faced with widespread child's rights violations in situations of conflict, it is often assumed that what is needed is more effective enforcement of child rights law and principles. In reality, it may be that the legal framework for the protection of child rights in conflict situations needs to be revisited if it is to provide an effective basis on which to act or to advocate.
3. During a humanitarian or post humanitarian situation, different children are affected in different ways by the crises, failure to provide targeted services aimed at reducing or helping the child to ward off the traumatic effects of the crises is a major challenge.
4. Failure of the affected state to ensure the enforceability and justiceability of localized Child Rights law and the United Nations Convention on the Rights of the Child.
5. Lack of concerted efforts by all stakeholders in recognizing the individuality of the rights of a child caught up in a conflict or crises as opposed to the generality of rights conferred on all children.
6. Most state parties to the convention on the rights of the child affected by disaster or crises do not prioritize the rights of the child in humanitarian situations; most are focused on rebuilding and reconstruction.

³Human rights Council 28th Session Final Report – Based Report of The Human Rights Council Advisory Committee on Best Practices and main challenges in the promotion and the protection of human rights in post disaster and post conflict situations p.9

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EXAMPLES OF GOOD PRACTICES UNDERTAKEN TO PROTECT THE RIGHTS OF THE CHILD IN HUMANITARIAN SITUATIONS

The UNCRC provides a strong legislative framework for realizing Child Rights in humanitarian situations, particularly articles 38 and 39

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.⁴

Consequently, Patricia Sukore Foundation for Women and Children has been at the fore front of advocating the Rights of The Child in humanitarian situations in Nigeria thus:

- Monitoring and reporting of grave violations of children's rights - The foundation's key priority in situations of armed conflict (e.g Northern Nigeria) is monitoring and reporting on grave violations of children's rights.

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⁴United Nation Convention on the Rights of the Child (Articles 38, 39)

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- SGBV is synonymous with conflict and crises, as incidences of SGBV are rampant during these periods. Patricia Sukore Foundation for women and Children works to guard against SGBV during humanitarian situations by referring women and children to safe spaces provided by UNICEF and other humanitarian providers.
- Psychosocial support is prioritized as children caught up in a conflict or during protracted crises are mostly affected psychologically; mothers are in most cases offered counseling alongside their children.

SPECIFIC PRACTICES THAT AIM TO GUARANTEE THE RIGHT OF THE CHILD TO PARTICIPATE AND TO BE HEARD (ARTICLE 12 CONVENTION ON THE RIGHTS OF THE CHILD) IN HUMANITARIAN SITUATIONS.

The effectiveness of any existing law lies in its applicability, implementation and enforcement mechanisms, as such, appropriate measures should be provided to enforce entrenched laws through appropriate legal and non-legal mechanisms.

Article 12 of the UNCRC provides for the freedom of expression of the child and the right of the child to be heard. The following practices are targeted at ensuring the rights of the child to participate and be heard in humanitarian situations:

- NGO's should set up mediums where children views and opinions involving their interest and concerns can be assessed by the larger community.
- The child victim and child witness of a crime must be given an opportunity to fully exercise her or his right to freely express her or his view in accordance with United Nations Economic and Social Council resolution 2005/20, "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime".⁵
- Children affected by emergencies should be encouraged and enabled to participate in analyzing their situation and future prospects. Children's participation helps them to regain control over their lives, contributes to rehabilitation, develops organizational skills and strengthens a sense of identity. However, care needs to be taken to protect children from exposure to situations that are likely to be traumatic or harmful.⁶
- States parties to consult with children in the development and implementation of legislative, policy, educational and other measures to address all forms of violence. Particular attention needs to be paid to ensuring that marginalized and disadvantaged children, such as exploited children, street children or refugee children, are not excluded from consultative processes designed to elicit views on relevant legislation and policy processes.⁷

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- States parties to support mechanisms which enable children, in particular adolescents, to play an active role in both post emergency reconstruction and post-conflict resolution processes. Their views should be elicited in the assessment, design, implementation, monitoring and evaluation of programmes. For example, children in refugee camps can be encouraged to contribute to their own safety and well-being through the establishment of children's forums. Support needs to be given to enable children to establish such forums, while ensuring that their operation is consistent with children's best interests and their right to protection from harmful experiences.⁸
- Good practice examples are available, inter alia, in the fields of violence prevention in schools, combating child exploitation through hazardous and extensive labor, providing health services and education to street children, and in the juvenile justice system. Children should be consulted in the formulation of legislation and policy related to these and other problem areas and involved in the drafting, development and implementation of related plans and programmes.⁹
- Support and encourage children's organizations and child-led initiatives to address violence and to include these organizations in the elaboration, establishment and evaluation of anti-violence programmes and measures, so that children can play a key role in their own protection.¹⁰

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⁵Committee on the Rights of the Child General Comment No 12 (2009) on the child victim and the child witness (CRC/C/GC 12) p.14 para. 62 Also available at: www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf

⁶ Committee on the Rights of the Child General Comment No 12 (2009) (CRC/C/GC 12) in emergency situations pp.24,25 para. 125

⁷ Ibid (CRC/C/GC 12) in situations of violence p.23 para. 118

⁸ Ibid (CRC/C/GC 12) in emergency situations p.25 para. 126

⁹ Ibid (CRC/C/GC 12) in the development of prevention strategies p.24 para. 122

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¹⁰Ibid (CRC/C/GC 12) in situations of violence p.24 para 121