

ON INTERNATIONAL BASES OF CHILD'S LEGAL STATUS DEFINITION

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Globally, states have an obligation to protect the children's rights to a greatest possible extend morally and legally, in conformity with the law, in the context of international cooperation¹.

In recent years the children's rights movement has gathered considerable strength and the adoption of international legal standards has been viewed as a particularly useful means to create the notion of "the children have rights" in national law. By general, those rights significantly overlap with all human rights, but they also extend to a variety of special measures to which children are entitled by virtue of their special vulnerability².

The first efforts at the international level were undertaken by the League of Nations, which established a special committee to deal with questions relating to the protection of children and adopted conventions prohibiting the traffic in women and children (1921) and slavery (1926), The Geneva Declaration of the Rights of the Child, adopted in 1924 by the Assembly of the League, was not cast in terms of state obligation but of duties declared and accepted by "men and women of all nations" and according to which "the child must be provided with the means needed for his normal development, both materially and spiritually"³.

Subsequently, the Universal Declaration of Human Rights of 1948 proclaimed a basic catalogue of internationally recognized human rights, most of which were equally applicable to children and adult, but only two of its provisions specifically concerned children - article 25 (2), which recognizes that "motherhood and childhood are entitled to special care and assistance" and article 26, dealing with the right to education.

¹ "Protecting human rights in Global world" : 2010 . for E source go through :

https://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FMS.htm

² E source on : Child Rights in International law – further details pls go through

<http://www.culturalsurvival.org/ourpublications/csq/article/childrens-rights-international-law>

³ Geneva Declaration of the Rights of the Child: Adopted 26 September, 1924, League of Nations.

In 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child emphasizing that "mankind owes to the child the best it has to give". The Declaration's 10 principles affirm the right of the child to receive special protection, to be given opportunities and facilities to enable him to develop in a healthy and normal manner, to enjoy the benefits of social security, including adequate nutrition, housing, recreation and medical services, to receive education and to be protected against all forms of neglect, cruelty and exploitation.

The Convention on the Rights of the Child, the current draft provides that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier " a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier ¹.

In the history of human rights, the rights of children are the most ratified. The United Nations Convention on the Rights of the Child (UNCRC) defines Child Rights as the minimum entitlements and freedoms that should be afforded to every citizen under the age of 18 regardless of race, national origin, color, gender, language, religion, opinions, origin, wealth, birth status, disability, or other characteristics.

These rights encompass freedom of children and their civil rights, family environment, necessary health care and welfare, education, leisure and cultural activities and special protection measures². The UNCRC outlines the fundamental human rights that should be affordable for children in four broad classifications that suitably cover all civil, political, social, economic and cultural rights of every child³:

Right to Survival:

- ✓ Right to be born,
- ✓ Right to minimum standards of food, shelter and clothing,
- ✓ Right to live with dignity,
- ✓ Right to health care, safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy.

¹ C R C was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

² Dr. Manoj Kumar Sadual "Protection of Child Rights In India: Issues And Approaches", 2014.

³ The United Nations Convention on the Rights of the Child: Working report 2010 : further details refer to:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/296368/uncrc_how_1_egislation_underpins_implementation_in_england_march_2010.pdf

Right to Protection:

- ✓ Right to be protected from all sorts of violence,
- ✓ Right to be protected from neglect,
- ✓ Right to be protected from physical and sexual abuse,
- ✓ Right to be protected from dangerous drugs.

Right to Participation:

- ✓ Right to freedom of opinion,
- ✓ Right to freedom of expression,
- ✓ Right to freedom of association,
- ✓ Right to information,
- ✓ Right to participate in any decision making that involves him/her directly

or indirectly.

Right to Development:

- Right to education,
- Right to learn,
- Right to relax and play,
- Right to all forms of development – emotional, mental and physical.

According to United Nations there are at least 15 International Human Rights Instruments and related guidelines, dating from 1955-2009, containing a bunch of total 77 articles, rules, guidelines or provisions to protect the children in conflict with the law. Of these 77 articles and provisions 10 are legally binding on states which have rectified the relevant instruments (of which 4 are from CRC (Child Rights Convention) - Articles 37(b), 40(1), 40.3(b), and 40(4), 22 are the paragraphs from the general comments of the committee on the rights of the child, and 45 are taken from the of rules and guidelines relevant to this area. Furthermore, 4 regional Human Rights instruments contain a total of 14 articles relevant to diversion and alternatives which are legally binding on states which have ratified them¹.

Protection of the children's rights in the world is especially important due to some action taken by some organizations, or individuals, which strictly conduct to breach children's wellbeing, or even treat the child not as a human being, but as goods to sell. This may seem to be a strong statement to be made, and some people will stress that, in the modern times, children are much better protected

¹ Unicef on "Child Rights and International Legal Framework: Toolkit on Diversion and Alternatives to Detention". Oct-6-2014. For more details visit http://www.unicef.org/tdad/index_56373.html

than in the past decade. In some points, this is true, but now there are new trends, which never existed before. Besides, there are still countries where children's rights are not protected and children suffer from great damage, not only in the physical sphere but also in the emotional sphere. Taking all of this into account, it is important to check how the international society protects children, what steps were taken to secure the rights of minors, what instruments we have to protect children's dignity and self-esteem. What important is that the effective protection of the rights of the child will not be achieved unless the substantive protections are perceived as culturally legitimate by local communities.

This short article will focus on the United Nations Convention on the Rights of the Child (1989) - the most important piece of international law concerning the children. The other important international instruments regarding the children are the Committee on the Rights of the Child, Children's Rights in Juvenile Justice, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') introduced in 1985, United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules') introduced in 1990, United Nations Guidelines for the Prevention of Juvenile Delinquency ('Riyadh Guidelines') introduced in 1990, Guidelines for Action on Children in the Criminal Justice System (Annex to UN Resolution 1997/30), Administration of Juvenile Justice ('Vienna Guidelines') introduced in 1997 and United National Common Approach to Justice for Children passed in 2008¹.

The main scope of all these instruments is to secure for all children the right to opportunities to survive, grow and develop, within the context of physical, emotional and social well-being, to each child's full potential.

The Convention on the Rights of the Child, with a Preamble and 54 articles, was adopted by the United Nations General Assembly by its resolution 44/25 on November 20, 1989, and entered into force on September 2, 1990.

Adopting the Convention in November 1989 put an end to the 10 years discussion on the children's rights issues, which started exactly in 1978 when the Government of the Republic of Armenia submitted the draft of the convention to the United Nations. The idea of putting all children's rights into one document was not new. In 1924, the League of Nations adopted a similar declaration, as the

¹ For Children's Rights and International Legal Frameworks see, http://www.unicef.org/tdad/index_56386.html (23.12.2014).

United Nations did in 1959. However, there was only a declaration¹ concerning children's rights. Children's rights were also mentioned in a couple of different UN documents concerning general human rights².

The most important right is the right to life, secured in Article 6: "Children have the right to live a full life; it is government duty to ensure that a child has survived and developed healthily". According to Article 18: parents and government are responsible for the well-being of the child and for bringing up the child considering what is the best for each child, not for children in general. The main duties in bringing up the child are the parents' responsibility, but when parents are not able to manage their duties by themselves, the government of the country where they are residing should grant them full support. The governments also are obliged to control if the child is properly cared for by the parents or other persons who are taking care of the child. It is also government responsibility to assure that each orphaned child and children whose parents are not able to take care of them, will be given an upbringing which respects their language, culture and religion. This rule applies also to adopted children according to Article 21. The other children's survival rights are secured in the Articles 23 and 24. The first of these two articles refers to disabled children. This is simply a regulation, which can be quoted in one sentence: disabled children have rights to live a full and independent life. There is government responsibility to organised special care for such children and support them in ways that their lives will be exactly the same as their friends without disabilities.

Both survival and development rights can be derived from Article 24. This article ensures children's rights to good quality health care, clean water, nutritious food and clean environment. All these factors are necessary for the child's well-being and proper development. On the other hand, without food, water and health care, a child will be not able to survive. This same qualification occurs in Article 27

¹ The general differences between the convention and declaration is the intention of the parties to create a binding document or not. Declaration is generally not legally binding for the signatories. So, this term is used in the titles of international documents when parties deliberately chose not to create the binding documents, but only wanted to decelerate some ideas or provisions. Convention, on the other hand are formally binding for the signatories when the ratification process reaches the certain number of countries. Conventions, in general, are open for the all members of the international community to join. Convention, or the other word, Treaty, created the instruments, which allowed enforcement of the convention. *Introduction to the Convention on the Rights of the Child*, <http://www.unicef.org/crc/files/Definitions.pdf> (20.12.2014).

² *Fact Sheet No.10 (Rev.1), The Rights of the Child*, Committee on the Rights of the Child, first session, in October 1991, p. 1.

of the Convention. The Convention secures, for children, the right to have such living standards that meet their mental and physical needs. Once again, this is the parents' responsibility to create proper living conditions for their child, and only when parents are not able to do it, government should support them. This second observation allowed to conclude that this Convention brings into force the subsidiarity principle. The general obligation to secure children's rights and survival concerns the parents, and it is the parents' duty to take care of their children. Only in such situations when parents are not able to do it, government is obliged to help them. The role of the government is broader, because whilst the parents' role is to take care of their children, the government's role is to ensure that they are doing this correctly, without the violation of the Convention of the Right of the Child. The state is breaking the Convention rules, when it does not establish appropriate control mechanisms over the parents or other peoples and institutions whose duties are to take care of the children. To the survival rights, one can also add: the right to have registered name and nationality; the right not be separated from their parents, and the right to present their own opinion when the adults are making decisions that can affect the child, and this opinion¹ should be taken into account by adults². Children's survival rights are the right to life and to have the most basic needs met (e.g. adequate standard of living, shelter, nutrition, medical treatment).

According to the preamble of the Convention of the Right of the child: "The child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular, in the spirit of peace, dignity, tolerance, freedom, equality and solidarity".

Considering this, the Convention introduces the children's development rights, which are, in general, the rights to proper education, play and leisure, cultural activities, access to information and freedom of thought, conscience and religion. Article 14 proclaims that: each child, who is growing up in a member state, should have the right to the freedom of thought, conscience and religion. Similarly in Article 18 it is said that: "this is the parents' primary right and

¹ This particular right is the most ground-breaking children's right. Generally children's opinion is not taken into account in most important cases, which are conducted by the courts.

² *Children's Rights: International Laws*, <http://www.loc.gov/law/help/child-rights/international-law.php> (20.12.2014).

obligation to bring up the child and secure his development”. The best interests of the child should be their basic concern. On the other hand, it is the State’s duty to provide each child with the access to the education system and assure that each child would receive proper education. This right is expressed in Article 28. This article states that access to the education system should be equal to all children and should not depend on the sex, religion or race. Primary education should be compulsory and freely available to all. Different types of the “secondary education including general and vocational education should be made available and accessible to every child, and appropriate measures should be taken such as introduction of free education and offering financial assistance in case of need”¹. Establishing the proper education system is not the State’s only responsibility; they are liable for the distribution of the proper information and guidance about it. However, the States are responsible to guarantee that each child younger than 18 years old, who is mentally capable, will get help from the State to start and finish university education. This interesting obligation relies on the parents’ and State, which is to take all necessary measures to encourage regular attendance at schools and the reduction of dropout rates².

A curious interpretation of passage 2 of Article 28 exists in the African countries. It confers to the exact meaning of the passage: “State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention”. Taking this citation into account it can be understood that, in the African schools (even those run by European organisations) corporal punishments are normal and lawful practices³. This situation puts in question the

¹ Article 28 of the Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

² *M. Santos Pais*, International law and children’s rights: critical review and wish list, <http://www.coe.int/t/dg3/children/> (09.12.2014).

³ Corporal punishment is lawful in schools in mainland Tanzania under the National Corporal Punishment Regulations 1979 pursuant to article 60 of the National Education Act 1978, which authorizes the minister to make regulations “to provide for and control the administration of corporal punishment in schools”. The Law of the Child Act 2009 does not repeal this provision or prohibit corporal punishment in schools. Government guidelines in 2000 reduced the number of strokes from six to four and stated that only the heads of schools are allowed to administer the punishment, with penalties for teachers who flout these regulations. In Zanzibar, the Ministry of Education has adopted a policy against corporal punishment in schools, but it remains lawful under the 1982 Education Act. The

Convention regulation, because it can be used as an excuse to allow to use the corporal punishment at school legally, which is totally against the Convention's purpose to secure children's dignity. The last but not the least of the children's development right is the state obligation to promote and initiate international cooperation in relation to children's education.

Children's protection rights are one of the most important rights introduced by the Convention. On 25 May, 2000, they were strengthened by the adoption of two optional protocols: the first one is the Protocol to the Convention on the Sale of Children (sex trafficking protocol) and the second one is the Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Child Soldiers Protocol). Additionally, the children's protection rights were also strengthened with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹ adopted in 1990. All this regulations have the essential scopes, which are: safeguarding children and adolescents from all forms of abuse, neglect and exploitation. The importance of this regulation is great, especially when we look at what happened in Sierra Leone during civil war (1991 to 2002) or other African countries where children – especially boys, were used as child soldiers².

Children's protection rights can be divided into four groups: child labour, sexual exploitation, military recruitment and juvenile justice. The first two groups are regulated in the Sex Trafficking protocol, the third one in the Child Soldier protocol and the last one, in the Convention itself and in the UN Rules from 1990. The core question is: 'Why did the international community need two additional protocols and did not simply regulate it in the Convention from the beginning?'

Zanzibar Children's Act 2011 does not explicitly prohibit corporal punishment in schools. In rejecting the recommendations to prohibit corporal punishment made during the UPR in 2011, the Government asserted that "corporal punishment does not apply in the education system" but that caning is administered in schools and is "a legitimate and acceptable form of punishment [not intended to] be violent, abusive or degrading". In April 2013, the Government reportedly confirmed that corporal punishment would continue to be used in public schools. *Summary of law reform necessary to achieve full prohibition*, <http://www.endcorporalpunishment.org/pages/progress/reports/un-rep-tanzania.html> (30.12.2014).

¹ United Nations General Assembly, 45/113 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 68th plenary meeting 14 December 1990.

² Ch. Tylor, *The Armed Conflict in Sierra Leone*, Human Rights Watch, April 11, 2012, <http://www.hrw.org/news/2012/04/11/armed-conflict-sierra-leone> (20.12.2014).

There are two answers to this question. The first one is simple: at the time of the creation of the Convention, these problems were not so widely discussed and they were not considered priority rights to be protected. The second answer sends us to the beginning of this article, which showed that the United States of America is listed among the countries, which have not ratified the Children's Rights Convention yet¹. It was essential for the enforcement of the Convention to have the United States of the America among the Members of the Protocols, because this guarantees that the protocols were really executed. This happened on the 23 December 2002, when the United States not only signed but also ratified both protocols².

The importance of particular groups of the children protection rights is different in different parts of the world. In Europe, the United States, Russia or Mexico the governments are focusing on preventing the sexual exploitation of children, given their dependency on others and their limited ability to protect themselves. Sexual abuse and exploitation can take a variety of forms including rape, commercial sexual exploitation and domestic abuse. In Asian countries problems concentrate around the issue of child labour issue, where work is defined as exploitative. This exploitation includes a range of factors including the work itself, the work environment, the presence of particular hazards, the perceived benefits of work and the nature of the employment relationship. In the African countries, there are military issues: "recruitment, where around 300,000 children and adolescents were engaged in armed conflict". Brutality of children soldiers is legendary in a negative sense. Eyewitnesses describe the extreme brutal acts of violence of which children were doers³.

Children are vulnerable and each child, because of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.

¹ There are two answers, why the US do not want to ratify the Convention: the first argument is that American society does not want to give UN the power to interfere in US laws and families. The second answer is that the Convention does not sufficiently protect the parents and guardians. Whatever the reason, it is it is understandable why such important international regulation is not in power in the US. L.J Cohen, A.T DeBenede *Why is U.S. against the children rights?*, January 24 2002, <http://ideas.time.com/2012/01/24/why-is-the-us-against-childrens-rights/> (09.01.2015).

² *Status of Ratification: Optional Protocols to the Convention on the Rights of the Child*, <http://indicators.ohchr.org> (06.01.2015).

³ *Children & youth*, http://www.hrea.org/index.php?base_id=81 (23.12.2014).

Children's participation rights are among those rights, which are the most controversial and widely discussed. As it was said above, children have the right to be heard and to speak out about subjects, which concern them. Article 12 of the Convention clearly and undoubtedly express that each child: "who is capable of forming his or her own views has 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". Participation rights could be manifested in different ways: for example, the child has the right to be a member of associations or different types of the organisations, according to his or her decision and interest. The child can actively participate in the community live and express his or her opinion about community matters¹. In addition, the child has the right to a child-friendly justice system, what means the right to participate in proceedings and express his or her judgement, opinion or presents his/her evidence and factual descriptions².

Participation rights are rooted in Article 2 of the Convention, which guarantees for each child the equal treatment, and are known as non-discrimination rights.

The Convention on the Rights of the Child remains, until today, a key reference for the promotion of children's rights, and a source of inspiration for the administration of justice and the consolidation of international justice standards and mechanisms.

It has established a number of milestones nationally and internationally to discharge its constitutional and international obligations in promoting the best interests of children. However, due to increasing population, poverty, etc. millions of children are not in a position to have a square meal once in a day. Further, the adverse sex ratio of the female population is a cause for concern. Apart from the state and a few non-governmental organizations, the people of the country also need to discharge their bit of services for the augmentation of the children's rights.

Key words: *Rights of children, International laws and policies, right to life and survival of a child.*

¹ *Children & youth*, http://www.hrea.org/index.php?base_id=81 (23.12.2014).

² *M. Santos Pais*, International law and children's rights: critical review and wish list, <http://www.coe.int/t/dg3/children/> (09.10.2014).

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Ա. Հ. ԱՊՐՈՅԱՆ

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Հոդվածում ներկայացված է երեխայի իրավական կարգավիճակի միջազգային իրավական հիմքերը, ներպետական նորմատիվ-իրավական սահմանման գործընթացում «Երեխայի իրավունքների մասին» ՄԱԿ-ի Կոնվենցիայի բացառիկ և կարևոր դերի մասին: Ինչպես նաև երեխայի իրավական կարգավիճակի իրավահավասարության, խտրականության բացառման սկզբունքների մասին:

О МЕЖДУНАРОДНЫХ ОСНОВАХ ОПРЕДЕЛЕНИЯ ПРАВОВОГО СТАТУСА РЕБЕНКА

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В статье представлены международно-правовые основы правового статуса ребенка, исключительная и важная роль Конвенции ООН "О правах ребенка" в национальном нормативно-правовом определении, а также принципы равенства правового статуса ребенка, исключение дискриминации.