

A globe is the central focus, showing the continents of Africa and Europe. In the foreground on the left, a large, light-colored wooden chess piece, possibly a king or queen, is partially visible. The background is a soft, out-of-focus blue and white.

ΚΕΔΙΣΑ  ΚΕΔΙΣΑ

ΚΕΝΤΡΟ ΔΙΕΘΝΩΝ ΣΤΡΑΤΗΓΙΚΩΝ ΑΝΑΛΥΣΕΩΝ
CENTER FOR INTERNATIONAL STRATEGIC ANALYSES

The UN Convention on the Rights of the Child

Evangelos Koulis

Research Paper No. 6

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1. INTRODUCTION

Since the discovery of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) in 1981, more than 60 million people have contracted the virus and approximately 30 million people have died from HIV-related causes (AMFAR, 2013). According to the Joint United Nations Program on HIV/AIDS, 40 million people are currently living with HIV/AIDS, including 2,2 million children under the age of 15 years (Salaam, 2005). Half of the affected population is situated in Sub-Saharan Africa alone. Between 1990 and 2003, sub-Saharan Africa's population of children orphaned by AIDS increased from less than 1 million to more than 12 million (UNAIDS, UNICEF & USAIDS, 2004). Due to the 10-year time lag between HIV infection and death, experts predict that without the availability of anti-retroviral medications orphan populations will continue to grow for at least two decades after a country has reached its peak HIV infection rate. Some experts estimate that every day in Africa, 1,900 children are born with HIV (Dabis & Ehounou, 2002). Apart from the possibility of contracting the virus, Orphans and Vulnerable Children (OVC) are condemned to live in extraordinary conditions and constant violation of their fundamental rights because of their exposure to violence, abuse, exploitation, and discrimination.

Despite the fact that almost all constitutions of different States and a number of international legal agreements strengthen and protect the rights of children, the United Nations' (UN) Convention on the Rights of the Child (CRC) remains the main universally ratified agreement concerning the elaboration, protection and promotion of children's rights. The objective of this paper is to illustrate the correlation between OVC and CRC. Through stressing on the relationship between OVC and CRC, this paper aims to highlight and analyse the Articles within the CRC which are closely linked to OVC. Within, the application of these rights from theory to practice will be demonstrated.

This paper consists of three parts. The first part consists of a synthesised definition of OVC and an overview of the CRC agreement. The second part illustrates CRC articles that are closely linked to OVC. The third part elucidates the practical application of CRC articles through examples of National Plans of Action for OVC in Africa.

2. DEFINITION OF ORPHANS AND VULNERABLE CHILDREN, AND OVERVIEW OF CONVENTION ON THE RIGHTS OF THE CHILD

2.1. Defining Orphans and Vulnerable Children

The term Orphans and Vulnerable Children (OVC) was introduced as an alternative term to "Orphanhood", which could not conceptualise the specific characteristics of OVC and their HIV related problems (Smart, 2003). Around 50 million orphans, of which 30% have lost their parents to AIDS epidemic,

currently exist in Sub-Saharan Africa (SOS Children's Villages, 2013). A fundamental step towards any development of intervention to help these children resides in being able to define and identify children who are more vulnerable than others. This is pertinent as a stunning number of children in Africa are considered to be vulnerable. Therefore, it is necessary to define the terms 'orphan', 'children', and especially the term 'vulnerable', as it is covered with abstraction. Although definitions of OVC have topological variations and differ between studies (Booth et al., 2002; UNAIDS, 2002; UNAIDS and WHO, 2004; UNICEF-Zambia, 2004; Kanyanta, 2005), there are some key identical elements between them. UNICEF and UNAIDS (1999) define an 'orphan' as a child under 18 years of age which can be a single orphan that has lost one parent, or a double orphan has lost both parents. A 'child' is primarily defined by age, usually until 18 years being the legal age in most sub-Saharan countries. An additional factor taken into account to define a child, is the dependence period, which may be extended by a variety of circumstances (e.g. unemployment and physical or mental illnesses).

While there is a wider consensus over the terms 'orphan' and 'child', 'vulnerability' is a more complex term as it is relative and not an absolute state (Kielland & World's Bank OVC Thematic Group, 2004). This relativity of the term is situated on the degree of vulnerability to different factors that a child may face. In other words, although many children are considered to be vulnerable, some of them face even more extreme vulnerabilities such as hunger, illness, and orphanhood at the same time. Thus, every child's case needs to be examined individually to determine their vulnerability to different factors (Skinner et al., 2006). Some of the most extreme factors of vulnerability are found in three core areas:

1. *Material Problems*

- Poverty, hunger, access to money
- Shelter, health care, education

1. *Emotional Problems*

including the deprivation in:

- Love, caring, Support
- Space to grieve
- Containment of emotions

1. *Social Problems*

- Lack of supportive peer group
- Stigma/Discrimination
- Risks in the environment
- Lack of guidance

Although many of the problems OVC face are not measurable, it is important to address and take into consideration all these factors when developing interventions. Thus, the aforementioned areas can be seen as a guide for humanitarian intervention, but not as strict lines and requirements. OVC should be examined based on these guidelines, but always with some flexibility depending on each case and the topological variation.

2.2. The Convention on Rights of the Child

There are a number of international conventions, goals, and other instruments that have mandated the rights of the children and defined the framework for action for OVC. Such notable examples consist of the Universal Declaration of Human Rights (1948) referring to the right to education for everyone; the African Charter on the Rights and Welfare of the Child (ACRWC) of (1990); the Millennium Development Goals (2000), some of which are relevant to the rights of all children, including OVC; and the Convention on the Rights of the Child (1989).

The CRC is by far the most semantic universal agreement between states regarding the rights that all children should enjoy. It is the first international attempt of a legally binding instrument that is specifically directed at children and incorporates all civil, political, social, economic and cultural rights for children. CRC is one of the few international agreements that has been ratified by all the nations in the world, except for Somalia and the United States. CRC embodies 54 Articles and 2 Optional Protocols and it is based on four core pillars: non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and the respect for the 'voice' of the child (UNICEF, 2013).

All the rights promoted by the Convention are equally important and have one goal: to reinforce the rights and ameliorate the living conditions of children around the world. In doing so, CRC sets high standards in all civil, social, health care, education, and legal services. These Articles are categorised by the Committee on the Rights of the Child as follows:

- General measures of implementation (articles 4, 41, 42)

- Definition of the child (article 1)
- General principles (articles 2, 3, 6, 12)
- Civil rights and freedoms (Articles 7, 8, 13 – 17, 37)
- Family environment and alternative care (articles 5, 9 – 11, 18 – 21, 25, 27, 39)
- Basic health and welfare (articles 6, 18, 23 – 24, 26 – 27)
- Education, leisure and cultural activities (articles 28, 29, 31)
- Special protection measures (articles 22, 23, 30, 32 – 40)
- Implementation measures (articles 43-54)

CRC's rights-based programming is based on four key principles: the universality of these rights, meaning that these rights should be applicable to all children; the indivisibility of rights; the responsibilities by the duty-bearers; and the participation of the right-holders (children), meaning that every child should actively be involved in programmes to fulfil their rights (SAVE THE CHILDREN, 2005).

Despite the multilateral reinforcement of children's rights, the pivotal point in the Convention on the Rights of the Child resides in the obligations and the accountability, which states have committed to respect and promote through their policies. Indeed, CRC has contributed to a variety of relief, education and development programmes. A notable example is that of the Millennium Development Goals which included child rights. The universal agreement on the core values that every child should have, is the strength that gives CRC its significance in being an instrument that can protect children.

Table 1 presents the titles of all Articles and Protocols contained within the CRC:

Articles	Title	Articles	Title
Article 1	Definition of the child	Article 2	Non-discrimination

Article 3	Best interests of the child	Article 4	Protection of rights
Article 5	Parental guidance	Article 6	Survival, life and development
Article 7	Registration, name, nationality, care	Article 8	Preservation of identity
Article 9	Separation from parents	Article 10	Family reunification
Article 11	Kidnapping	Article 12	Respect for the views of the child
Article 13	Freedom of expression	Article 14	Freedom of thought, conscience and religion
Article 15	Freedom of association	Article 16	Right to privacy
Article 17	Access to information; mass media	Article 18	Parental responsibilities; state assistance
Article 19	Protection from all forms of violence	Article 20	Children deprived of family environment

Article 21	Adoption	Article 22	Refugee children
Article 23	Children with disabilities	Article 24	Health and health services
Article 25	Review of treatment in care	Article 26	Social security
Article 27	Adequate standard of living	Article 28	Right to education
Article 29	Goals of education	Article 30	Children of minorities/indigenous groups
Article 31	Leisure, play and culture	Article 32	Child labour
Article 33	Drug abuse	Article 34	Sexual exploitation
Article 35	Abduction, sale and trafficking	Article 36	Other forms of exploitation
Article 37	Detention and punishment	Article 38	War and armed conflicts
Article 39	Rehabilitation of child victims	Article 40	Juvenile justice
Article 41	Respect for superior national stan-	Article 42	Knowledge of rights

	dards		
Articles 43-53: Implementation measures			
Optional Protocol 1: Involvement of children in armed conflicts			
Optional Protocol 2: Sale of children, child prostitution and child pornography			

3. RELATIONSHIP BETWEEN CRC AND OVC

All 54 Articles and the 2 Optional Protocols which the Convention embodies are equally important and relate, more or less, to Orphans and Vulnerable Children. However, due to the limited size of this paper, a few articles have been illustrated within this section. During the past decades, the international development assistance approaches have changed dramatically due to the multilateral effects of HIV and the hardships faced by OVC. These approaches have moved from the assumption that improving economies would ameliorate the lives of citizens, to a more 'people-centred' approach which emphasises on empowering people in need. Thus, this paper lays stress on analysing some Articles that address the immediate needs of OVC and others closely related to a rights-based approach for OVC. Through this, it seeks to describe what each article entails.

3.1. The right to survival, life and development (Article 6)

Article 6 consists of one of the basic rights children are inherited to. It states: "Every child has the inherent right to life...State parties shall ensure to the maximum extent the survival and development of the child" (CRC, 1989:1). Children have the right to survive into adulthood and develop. To do that every child should be able to benefit from economic and social policies. More importantly, it is the State's responsibility to every child regardless of its age, sex or religion to ensure it can develop, even if they do not conform with the moral and ethical standards of cultures and societies. As mentioned above (see 2.A), millions of OVC face throbbing hardships with immediate needs such as food, shelter and health-care. It is therefore their right to be able to survive via government's and communities' assistance.

3.2. The right to an adequate standard of living (Article 27)

Article 27 (CRC, 1989) underlines that every child has the right to a standard of living which shall be appropriate to meet its physical and mental needs. Furthermore, governments should assist the families or guardians who are not capable of providing this standard, especially in their basic needs (food, clothing etc.). Like Article 6, this Article entrenches the fundamental right to a tolerable life for children. For Orphans and Vulnerable Children this right translates into the responsibility of each government (or NGOs) to support and strengthen the capacity of their families and communities in order to help their physical, mental, spiritual, moral, economic and social development.

3.3. The right to non-discrimination (Article 2)

Article 2 (CRC, 1989) refers to the essential right to non-discrimination of children irrespective of “the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (UNICEF FACT SHEET :1). Moreover, children shall be “protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members” (UNICEF FACT SHEET :1). For many OVC, especially those who have contracted HIV, this is one of the most commonly violated rights, responsible for heightening their vulnerability. Along with other material and emotional problems, OVC are usually facing social discrimination in their communities. This deep socio-cultural problem affects other aspects of OVC lives such as their access to education, information, health-care and other social services. Therefore, Article 2 is fundamental for OVC as it demands States to build on strategies that promote training programs designed to change attitudes of discrimination and stigmatisation.

3.4. Children deprived from family environment and Protection from all forms of violence (Articles 20 and 19)

Article 20 (CRC, 1989) establishes the right to special care for children who do not have their families to take care of them, by people who respect their culture, group and ethnicity. Additionally, Article 19 (CRC, 1989) constitutes the right of protection from being hurt or mistreated, physically or mentally, for all children. This includes, abuse or neglect from parents or any other person who looks after a child.

Both Articles are closely related to OVC as orphans need someone to support and look after them. In many reported cases, OVC have been abused either on streets by strangers or by their own relatives and people who look after them. Article 19 also specifies that any form of punishment which entails violence is

prohibited. As orphans consist of a group extremely vulnerable to abuse, these principles are of immense importance.

3.5. The right to education (Article 28)

Article 28 (CRC, 1989) endorses the right to education and specifically free primary education equally for all children whether orphaned, infected or affected in any way from HIV. Education plays a critical role for the fulfilment and development of every child (Committee on the Rights of the Child, 2003). Especially in relation to OVC, education is a crucial mean of empowering children to protect themselves, be aware of any risks and achieve their aspirations. In combination with Articles 42 and 17 (CRC, 1989), which represent the right to knowledge and the right to information, the right to education consists of a fundamental right and maybe the only way to alter the lives of vulnerable children. However, the sad reality regarding the education of millions of vulnerable children reveals that even when education is free, many OVC face serious difficulties in staying in school because they lack even the basic equipment, a shelter or emotional support; they engage work very young to sustain themselves; and are being discriminated by teachers or other children. Thus, education is inextricably correlated and depended to other social structures that need to be addressed, in order to be effective.

4. APPLICATION OF CRC PRINCIPLES TO PRACTICE

While CRC's importance as a universally ratified agreement to protect children's rights is uncontested, the theoretical fortification of children's rights is not enough for an effective practical implementation. Thus, this section will move away from the theoretical aspects of children's rights and will focus on their practical implementation through National Plans of Action (NPAs) for OVC in Africa. This will help understand how CRC's Articles are put into practice when facing OVC's problems in reality, and where these strategies lack.

As States are the primary duty-bearers according to CRC, they are responsible to create the legislation and the policy framework to help the realisation of children's rights (SAVE THE CHILDREN, 2005). States are accountable to the UN's Committee on the rights of the child which is the monitoring body that puts pressure and encourages governments to endorse CRC. However, the role of Community-Based Organisations (CBOs), Non-Governmental Organisations (NGOs) and Faith-Based Organisations (FBOs) is vital in order for these OVC programmes to be carried away, especially in some African countries where millions of people along with OVC face famine and extreme poverty. It would not be an exaggeration to say that without the contribution of such organisations, the implementation of CRC principles solely by states would have been impossible. Until 2009, 12 countries in West and Central Africa such as Nigeria, Mali and Gambia have already formulated national plans of action targeting OVC. These national plans incorporated five strategies based on a

strategic framework which was drawn up at the international level by UNICEF and other Organisations (UNICEF and Others, 2004). These strategies were: (UNICEF Working Paper, 2008:18)

- **“Strategy 1:** To build the capacity of families to protect and bring up orphans and vulnerable children by extending the lives of their parents and providing economic and psychological support.”
- **“Strategy 2:** Mobilise and support community initiatives.”
- **“Strategy 3:** Guarantee access for orphans and vulnerable children to essential services namely, education, medical services, registration of births.”
- **“Strategy 4:** Ensure that the Government protects the most vulnerable children by reinforcing policies and laws and allocating resources to families and communities.”
- **“Strategy 5:** Arouse awareness of the problem at all levels through sensitisation and social mobilisation in order to create a supportive milieu for children and families affected by HIV/AIDS.”

Example 1: Rights of Survival, Life, and Development (Article 6) and Adequate Standard of

Living (Article 17)

In terms of the realisation of the rights of survival, life and development (article 6) and of an adequate standard of living (article 17), a characteristic case is Zimbabwe’s National Plan of Action for vulnerable children. This plan gathered support and cooperated with UN, international donors, schools, hospitals and local distribution programmes. One of the objectives was the coordination and mobilisation of resources to support food distribution and water along with a programme for medical treatment for orphans and vulnerable children. This effort was also focused on the strengthening and expanding community outreach mechanisms in order to help as many children as possible. Additionally, OVC camps were really helpful in providing psychosocial support and assist OVC to develop life skills (Government of Zimbabwe, 2004).

Accordingly, the same national plan has sought to reduce the number of children who live outside of a family by 25%. In doing so, it gathered information concerning institutions, street and displaced children and child-headed households in order to ensure adequate standards of care as in respect with the right to special care for children deprived of a family environment (Article 20). Moreover, in an attempt to eliminate violence against OVC (Article 19), it mobilised resources to promote Zero Tolerance campaign against child abuse

and implemented education programmes for law enforcement officers and other social workers (Government of Zimbabwe, 2004).

Example 2: Right to Education (Article 2) and Right to Non-discrimination (Article 28)

In relation to the practical implementation of the Articles 2 and 28 regarding the rights to education and non-discrimination respectively, Namibia's national plan of action for OVC consists of another interesting example. The plan's aim was to ensure equal proportion of OVC versus non-OVC participation to education. OVC were exempted from school and examination fees and were offered food and counselling in a way to alleviate their needs and tackle school drop-out rates. The plan has also targeted OVC who had already dropped-out from school to help them acquire basic skills through Vocational Training programmes. The purpose of this educational objective was twofold: on the one hand it helped thousands of OVC to enrol to school by making sure they have support in their basic material and psychological needs, and on the other it worked towards the elimination of discrimination in schools for OVC (Government of Namibia, 2006). Ultimately, these NPAs along with others and through the support from international organisations and NGOs, aimed to confront the problems OVC face. However, despite the positive initiatives according to UNICEF's reports, most of the national plans of action programmes have encountered a number of serious problems (UNICEF Working Paper, 2008). Some of the problems which have hindered NPAs initiatives are: the lack of information to guide these programmes; the absence of social protection systems; the lack of capacity to coordinate the plans; and the fact that most NPA's focus on high prevalence areas, leaving the rest areas with limited interest to intervene (UNICEF Working Paper, 2008).

5. CONCLUSION

The purpose of this paper was to reflect upon the relation between the Convention on the Rights of the Child and Orphans and Vulnerable Children. In doing so, the first part concentrated on the clarification of the definition of OVC with an overview of the role and aspects of CRC. The second part illustrated how CRC's principles correlate with OVC by demonstrating a number of fundamental Articles/Rights for vulnerable children. The last part epitomised the practical implementation of CRC principles and the problems that are encountered.

To conclude, it is quite easy to criticise CRC in many ways. Some of the main criticisms point out the high level of abstraction that CRC Articles embody and the ineffectiveness of CRC and the international community to confront the encountered problems and protect millions of vulnerable children from suffering. Although these criticisms reveal some pathologies within these international agreements, it needs to be pointed out that CRC is not a panacea for the suffering of vulnerable children. CRC consists of the foundation of

children's rights, but their realisation requires more than a universally accepted Convention. CRC has articulated all the necessary provisions that children all over the world need in order to survive, develop, flourish and be protected. Indeed, the realisation of these rights resides on individuals, NGOs, communities, governments and every other social structure. Nevertheless, one thing is certain: children as the most vulnerable human beings, should always be at the forefront of each government's policies and legislations, not because of their vulnerability, but because it is their right.

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