

Protection of Child Rights in Myanmar

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Abstract

“Children’s rights” are the human rights of children with particular attention to the rights of special protection and care afforded to minors. Convention on the Rights of the Child of 1989 was the first instrument to incorporate the complete range of international human rights. Myanmar ratified the Convention on the Rights of the Child in 1991 and passed the Child Law in 1993. There are many domestic law related to the protection of child such as Penal Code of 1960, Anti-trafficking in Person Law of 2005 and Myanmar Labor Laws. The 2008 Constitution of the Republic of the Union of Myanmar also contains the provisions for the protection of child. In order to ensure the children’s wellbeing and interest, the State, the parents and the community that surround them have responsibility. An efficient protection is essential to the children’s wellbeing because, as vulnerable people, they are more exposed to problems of mistreatment, exploitation, discrimination and violence.

Introduction

The period of childhood is a phase in which the human being is more vulnerable because they have not finished developing physically or mentally yet. Furthermore, the child requires a particular attention and protection. Therefore, child protection must be ensured by the parents and the community which surround them, then by the States. In order to ensure the children’s wellbeing and superior interest, the State must establish a protection system for the children. In addition, the States must fight against the customary practice which leads and encourages discrimination and mistreatment towards children. The parents and the community must have competencies, knowledge and motivation to provide effective protection for children.

Definition of Child and Children’s Rights

Child means a person between giving birth and full growth; a young human being who is not yet an adult; a young boy or girl. Children’s rights are the human rights of children with particular attention to the rights of special protection and care afforded to minors.

Convention on the Rights of the Child defines a child as a human person who has not reached the age of eighteen years.¹ Children’s rights include their rights to association with both parents, human identity as well as the basic needs for physical protection, food, universal state-paid education, health care, and development of the children, equal protection of the children’s civil rights, and freedom from discrimination on the basis of the children’s race, gender, sexual orientation, gender identity, national origin, religion, disability, colour, ethnicity, or other characteristics.²

In Myanmar, “Child” means a person who has not attained the age of 16 years, and a person who has attained the age of 16 years, but has not attained the age of 18 years, is called “Youth”.³ But there is no specific law for “Youth” in Myanmar.

Children’s rights law is defined as the point that intersects with a child’s life. It includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitative services; care and protection

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¹ Article 1 of the Convention on the Rights of the Child, 1991

² Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 2002, p. 13

³ Section 2 of the Child Law, 1993

for children in State care; ensuring education for all children regardless of their race, gender, sexual orientation, gender identity, national origin, religion, disability, color, ethnicity, or other characteristics, and; health care and advocacy.⁴

Myanmar becomes a State Party to the Convention on the Rights of the Child in 1991 and various provisions of the CRC manifests through the framework of the 1993 Child Law; however, there are some areas in which the law diverges from the CRC, such as defining a child as up to 16 years rather than 18 years. So, Myanmar is about to revise its laws governing the status and treatment of children, including the very definition of a child.

Best Interest of the Child

The concept of the best interest of the child leads to many questions and debates. Who gets to decide what is in the best interest of a child? Is it the parents, the community, or the State? Or is it the children themselves? The idea of the standard of the 'best interest of the child' is that there is no single answer to these questions that can ever be correct all of the time.

The Convention on the Rights of the Child states that, "in all actions concerning children, whether undertaken by public or private welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be primary concern."⁵

The Declaration of the Rights of the Child states that "the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration."⁶

Maintenance, custody and care of children, cultivating and promoting the all-around physical intellectual and moral development of the child shall be the primary responsibilities of parents or guardian; and every child shall not be separated forcibly from his or her parents, except in a case where in accordance with law, separation is necessary for the best interests of the child.⁷

The Child is the rights bearer and her/his best interest is always evolving, and should always rise above procedural issues. A 16 year-old person has different needs than a baby, and yet both are considered as children. At the same time, two 11 year-old children can have different levels of maturity and merit, very different treatment in different situations. It is necessary to attempt to bridge these differences by focusing on capacity rather than age as the determinant in decisions related to children because the greater capacity a child gains, the more responsibility he/she should have in decisions affecting his/her life. For example, if a child's parents are getting divorced, the opinion of a 15 year-old regarding which parent he or she wishes to live with may be given more weight than that of a 5 year-old because the older one has greater emotional and mental capacity to be aware of and can express what is his/her best interest.

Parents cannot always determine what the best is, nor can the State. This extends to culture as well- generally speaking, in the West; the focus is on the autonomy of the child while in the East, the focus is on participation and role in the community. Neither concept is wholly right nor wrong.

Protection against All Forms of Exploitation

⁴ <http://www.en.m.wikipedia.org>

⁵ Article 3 (1) of the Convention on the Rights of the Child, 1991

⁶ Principle 2 of the Declaration of the Rights of the Child, 1959

⁷ Sections 11 and 12 of the Child Law, 1993

There are many forms of child abuse, including neglect, physical abuse, sexual abuse, exploitation, causing injury, child labour, or risk of serious harm to a child. Among these abuses, child labor is highly prominent and visible in Myanmar across both rural and urban setting. Although comprehensive data on child labour is not available, there is a shared understanding by the Government and stakeholders that the issue is problematic. Some children in Myanmar are affected by activities that constitute the worst forms of child labor, such as recruitment of children for using in armed conflict.

There are numerous negative consequences that stem from child labor. Child labourers are at risk of being denied a childhood. They are subject to exploitation and are often paid the lowest rates or not paid at all. Child labourers often work in unhealthy and unsafe conditions that can risk their physical, mental and emotional health. Child labour often replaces adult labour because it is cheap and easily controlled, and this in turn raises adult unemployment. Child labor can also perpetuate poverty because children who are deprived of education will have low earning prospects as adults.⁸

In Myanmar, children younger than age 13 are not permitted to work in shops or factories and also prohibited children under 13 to 15 from working more than four hours a day.⁹ In December 2013, Myanmar ratified the International Labor Organization's Worst Forms of Child Labour Convention, 1999. This calls for the elimination of the "worst forms of child labour" including slavery and the use of children in hazardous work and armed conflict.¹⁰

Child trafficking is a problem in many parts of South-East Asia and across the world. In Myanmar, the problem is exacerbated by limited awareness of children's rights and under-resourced child protection services. For children in Myanmar, many of whom are out of school, many of whom are on the street and in other precarious situations, they are very easy targets to be abused and trafficked out of the country.

The Anti-Trafficking in Persons Law provides to give special protection of dignity and identification and necessary security and assistance for trafficked child.¹¹ The Convention on the Rights of the Child protects against the illicit "transfer or non-return of children abroad,"¹² and introduce to ensure that the "social" exploitation of children was recognized, along with their sexual and economic exploitation.¹³

The Convention on the Rights of the Child provides that children have the rights to be protected from being hurt and mistreated physically or mentally. Governments should ensure that children are properly caring for and protect them from violence, abuse.¹⁴

However, not all cultures view child labour as a bad thing, and not all forms of child labour are bad. For example, many parents think that experience from part time working in a safe job is very valuable to one's development. Determining the correct age at which a child may be permitted to work, what types of labour, and for how long a child may labour are difficult questions and can vary from culture to culture.

⁸ <http://www.unicef.org>

⁹ Section 76 of the Factories Act, 1951

¹⁰ <http://www.america.aljazeera.article.child-labor.com>

¹¹ Section 16 of the Anti-Trafficking in Persons Law, 2005

¹² Article 11 of the Convention on the Rights of the Child, 1991

¹³ Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 2002, p.533

¹⁴ Article 19 of the Convention on the Rights of the Child, 1991

Participation and Protection Rights

Children, because they are, by nature, in a vulnerable group, require special consideration to ensure their protection from abuse, neglect, exploitation and cruelty, and heightened protection in times of armed conflict and within the criminal justice system. Children also require special consideration in terms of their participation in decisions about their well-being.

First of all, child protection must be ensured by parents and the community which surround them, then by the States. In order to ensure the child's wellbeing and superior interest the States must establish a protection system for the child. An effective system includes laws, politics, procedures and practices which are intended to prevent and fight against various problems of mistreatment, violence and discrimination that can damage a child's wellbeing, such as child law, 1993, penal code, 1960, etc. In addition, the State must fight against the customary practices which lead and encourage discrimination and mistreatment towards children.¹⁵

Parents and the community must have competencies, knowledge and motivation to provide effective protection for children. They must identify and react against possible cases of discrimination, neglect or mistreatment.¹⁶

Children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life. Participation rights include the right to express opinions and be heard, the right to information, and freedom of association. Engaging these rights, as they mature, helps children bring about the realization of all their rights and prepares them for an active role in society. However, children must also be protected from their bad decisions and receive lighter penalties for their mistakes. Participation and protection measures for children should work in harmony and reflect the challenges children face as they mature.¹⁷

Therefore, in addition to governments' obligations, children and parents are responsible for respecting the rights of each other. Children's understanding of rights will vary depending on age and parents in particular should tailor the issues they discuss, the way in which they answer questions and discipline methods to the age and maturity of the individual child.

Conclusion

Children have the same basic general rights as adults and also specific rights that recognize their special needs. Children, because they are by nature a vulnerable group, require special consideration to ensure their protection from abuse, neglect, exploitation and cruelty. The changing political and social context within Myanmar has created many opportunities to improve the protection for children from violence, abuse, neglect and exploitation. For children in Myanmar, many of them are out of school, many of them are on the street and in other precarious situations, they are very easy targets to be abused and trafficked out of the country. Child protection must be ensured by parents and the community which surround them, then by the State. In order to ensure the child's wellbeing and superior interest, the State must establish a protection programme for the child. Parents and the community must have competencies, knowledge and motivation to provide effective protection for children.

¹⁵ <http://www.humanium.org>

¹⁶ Ibid

¹⁷ <http://www.unicef.org>

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References

- Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 2002
- The Convention on the Rights of the Child, 1991
- The Declaration of the Rights of the Child, 1959
- The Anti-Trafficking in Persons Law, 2005
- The Child Law, 1993
- The Factories Act, 1951
- <http://www.america.aljazeera.article.child-labor.com>
- <http://www.en.m.wikipedia.org>
- <http://www.humanium.org>
- <http://www.unicef.org>