

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

Introduction

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

1

Living rights, social justice, translations

KARL HANSON AND OLGA NIEUWENHUYS

Where do children's rights come from? Since the adoption of the UN Convention on the Rights of the Child (CRC) in 1989 the recognition that children are holders of rights, not only in the wealthier part of the world but perhaps especially in the least developed areas, has been gaining coinage among both practitioners and academics. This recognition has often been based on the implicit assumption that children's rights are the product of the lengthy process of legal negotiations that took place at the UN in Geneva during the decade preceding the ratification of the CRC by all but two (the USA and Somalia) countries in the world. This assumption has generally led to scholarship and policy-making being mainly concerned with issues of implementation. In this book we want to propose another approach. We emphasize that law always represents an unstable translation of ideas of right and wrong that exist in the real world and are based on lived experiences. From this it follows that children's rights are not merely the product of deliberations that are fixed in international legislation but that many of their underlying ideas already exist before they are translated into legal principles. Children, their parents and their communities continue to craft these conceptions of rights as they actively engage with the issues that confront them in the contexts in which they live and in which they establish the conditions for developing common grounds for action.

This introductory chapter proposes the outline for a theoretical framework that captures the complexities of children's rights as an open-ended endeavour that is responsive to the world that the young construct as part of their everyday life. It is built around three key concepts that we see as interrelated and impacting upon each other: living rights, social justice and translations. Most of our case-study material comes from the developing world, because, as we explain below, it is there that the contrast between legal principles and daily practice makes it dramatically clear that an alternative conceptualization of children's rights, that goes

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

beyond issues of implementation, is necessary. Below we firstly explain how we arrived at our approach and then move on to a detailed discussion of its three buttressing notions: firstly *living rights*, secondly *social justice* and finally *translations*.

From one to many centres

If there is one city geographically associated with the CRC then it is Geneva, where the Convention was drafted between 1979 and 1989 and where, since 1992, the Committee on the Rights of the Child that monitors states' compliance with its provisions holds its three annual sessions. An important number of UN specialized agencies, intergovernmental and non-governmental organizations such as UNICEF, the International Labour Organization (ILO), the World Health Organization (WHO), the International Committee for the Red Cross and Save the Children have their headquarters or maintain offices a few kilometres from where the CRC is monitored. It was while walking through the parks located within this neighbourhood that we first asked the question 'where do children's rights come from?' Did children's rights really come into being in the gatherings of children's agencies in Geneva to irradiate as a *deus ex machina* throughout the world, in particular the developing world? We concluded that children's rights have not one but multiple geographical centres. Even if they are undeniably codified in international and national legal documents and further specified in international jurisprudence and development programmes, they were already alive in the minds and lived realities of children throughout the globe before that. Children do not simply discover their rights after exposure to metropolitan rights discourses, but become aware of their rights as they struggle with their families and communities to give meaning to their daily existence. This perspective on children's rights differs from the position of natural law scholars about the inherent character of human rights and comes close to what Dembour (2010) coins as the protest school of thought in human rights. Children engage with, interpret and give meaning to their rights; it is from this bottom-up perspective that their rights can be seen as 'living'. Thinking of them as living rights questions dominant views on the relation between the centre and the periphery of children's rights, and challenges the relevance of the centre-periphery binary itself.

Our Socratic walk in the geographical centre of official children's rights in Geneva led us to discuss the dimensions of the relation between global and local understandings of children's rights. We were particularly

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

interested in theorizing the findings of a growing body of scholarship on how children's rights are put into practice from such diverse disciplines as sociology, anthropology, developmental psychology, international development studies and human rights studies. Facile, scandalous and extreme representations of the child in developing countries unduly cast the issue of children's rights in static binaries that almost force both scholars and the public at large into what has evolved as 'correct political thinking'. We wanted to offer an approach that would lend support to researchers attempting to escape from this type of thinking. Being critical of the ways children's rights are interpreted did not, in our eyes, result in a denial of the importance of rights to enhance children's lives and expand their agency. As we hope to demonstrate in this volume, rather to the contrary.

Finding inspiration in feminist theory, particularly its claim that women can produce knowledge on their own terms (Sunder, 2007), we thought that an interdisciplinary approach would help open spaces for children's production of knowledge about their rights. An interdisciplinary approach that takes complexity, circularity and interrelations into account offers a promising path to negotiate both the top-down 'paternalistic' implementation and the bottom-up 'empowering' uses of children's rights and to overcome sterile 'us vs. them' binaries so present in theorizations over power.

A few months before our promenade in Geneva, we had published with Pamela Reynolds a special issue of the journal *Childhood* titled 'Refractions of children's rights in development practice'. Taking an anthropological approach that focused on the lives of vulnerable children in a variety of contexts across the globe, we were concerned with the complex ways in which rights-based policies mesh with the practice of development and in the process become entangled, weld together or clash with children's ideas of right and wrong. We saw some danger in 'our use of rights to abstract and universalize at the expense of efforts to imagine the stake we have in mutual comprehensibility and to be responsive to other forms of life, especially those under construction by the young' (Reynolds *et al.*, 2006: 300–1). We suggested that an anthropological perspective could help demonstrate that children are not passive recipients of ideas that come 'from above' and that, if children's rights are to be entrenched, children should be party to the shaping and implementation of these rights. We now felt that the time was ripe for a more interdisciplinary approach and planned a workshop in Sion (Switzerland) where we invited a number of researchers coming from a range of disciplinary backgrounds, including socio-legal studies, communication sciences, human geography, social anthropology,

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

sociology, developmental psychology and political science to write an original contribution on the theme of children's living rights. The discussions during the workshop provided us with further ideas for the theoretical framework developed in this chapter. We subsequently engaged carefully with and commented upon the various contributions, out of which twelve papers were finally selected to be included in the present volume.

As already indicated, the contributions all make reference to the three interrelated key concepts, living rights, social justice and translations, which also serve to organize the different parts of the book. In this theoretical introduction, we further develop the three concepts and indicate how the individual chapters contribute to conceptualize children's rights in developing societies. Starting from the lived experiences in which rights take shape raises the issue of how they become entrenched. We propose the notion of social justice to capture the broader shared normative beliefs that make rights appear legitimate and beyond question for those who struggle to get them recognized. These struggles result in what we call translations to designate the complex fluxes between different beliefs and perspectives on rights, their codification and the unstable interpretations given to these codified forms. Whilst the three proposed concepts each have some explanatory power, it is our contention that it is in their interrelatedness that we can start to grasp the complexities of how rights take shape in children's lived realities and daily struggles.

Living rights

The concept of living rights highlights that children (amongst other people), while making use of notions of rights, shape what these rights are – and become – in the social world. The concept challenges the idea that children's rights are exclusively those defined by international institutions or states. Offering the opportunities for empirical investigation of how co-existing, non-hierarchical forms of children's rights influence a given social arena, the notion creates a critical distance facilitating study and evaluation (see Tamanaha, 2000).

Children's notions of rights vary from seemingly inoffensive pleas, as when children demand the right to playgrounds, safe streets or a healthy environment, to more contentious claims that question hegemonic interpretations of what children are entitled to. When asked about their rights, children of Johannesburg, for instance, talk about the right to safely cross roads and to neighbourhoods that are free from crime (Swart-Kruger and Chawla, 2002). In India they demand play spaces in

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

crowded slum areas (Driskell *et al.*, 2001). In Ethiopia girls take a critical stance against NGOs that interpret their rights in terms of autonomy and the pursuit of individual interests, arguing that they have duties as well and that they do not want to be obliged to earn their lives begging on the streets (Nieuwenhuys, 2001). In India, West Africa and many Latin American countries, the right to work and to be respected as workers has come forward as an important issue that children want to see addressed (Liebel, 2003 and Chapter 11 of this volume). The right to beg (Abebe, 2008; Invernizzi, 2003; Swanson, 2007), the right to take up arms (Denov, 2010; Peters and Richards, 1998; Rosen, 2005; Trawick, 2007), the right to work safely on the streets (Hecht, 1998; Kilbride *et al.*, 2000; Kovats-Bernat, 2006; and see Balagopalan in Chapter 7 of this volume), to an education that is respectful of communal political traditions and priorities (Baronnet, 2008), to protected marriage and motherhood (Bunting, 2005; Melchiorre, 2009; Merry, 2009; and see Henderson in Chapter 2 of this volume), and to be a family head (Evans, 2002; Kesby *et al.*, 2006; and see Cheney in Chapter 8 of this volume) are all rights that problematize top-down translations of children's rights.

The expression of rights often includes explicit demands addressed to local authorities and both national governments and international development agencies. Children may for example demand that NGOs address police violence on the streets, maltreatment, rape and murder while in custody, not hesitating to bear witness against the police at their own peril and risk. Their criticisms may often be shrewdly levelled against the interpretation of their rights – the right to survive figuring prominently and often being mentioned as overriding the rights of the urban middle classes to an environment free of beggars and street sellers (see for example: Berman, 2000; Droz, 2006; Godoy, 1999; Khair, 2001). Kovats-Bernat cites a former street child, now a staff member of the NGO Lafanmiselavi in Haiti's capital city of Port-au-Prince, expressing ideas about children's rights in these political terms:

I remember when I was living on the streets. My heart would break when I saw other children going to school and participating in activities myself and other children living on the streets could never do. It's humiliating, because people who see you on the street treat you like an animal, and you can do nothing to defend yourself. Instead you feel very sad, and the sadness never leaves you ... We need laws to force the government to take care of these children. They have a right to live like children who have parents.

(Kovats-Bernat, 2006: 131).

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

The critique of market-led globalization is reiterated time and again, sometimes plainly voiced but more often craftily practised in subtle reverse manipulations of powerful global discourses. Child soldiers in Liberia and Sierra Leone manipulate NGO representations of victimhood to gain access to education or other resources (Hoffman, 2003; Shepler, 2005; Utas, 2005); HIV-orphans in South Africa overturn the very discourse of orphanhood by claiming that the whole of society has been orphaned by a government that has abdicated its duty to protect the vulnerable in times of crisis (Meintjes and Giese, 2006). The very way NGOs interpret children's rights may also be reinscribed in terms that subvert entirely their meaning, as when street children in Guatemala say: 'Our right is the right to be killed' (Godoy, 1999).

We look at children's rights as a 'living practice' shaped by children's everyday concerns. The question of how to understand the other's perspective when the other is a child is addressed in many contributions in this volume. Patti Henderson's ethnographic description of 'informal marriage' among rural 'AIDS-orphans' in KwaZulu-Natal, South Africa (Chapter 2) draws attention to the ambiguities with which girls especially have to deal in real-life situations. While the right to education and the absence of bodily violence may be formally championed as the hallmarks of girls' emancipation, limited real-life options for securing livelihoods entice girls to revive ancient practices of informal marriage that obstruct this very same emancipation. Courting repertoires and their outcomes are sufficiently embedded within local worlds to draw young girls towards what for them is an 'obvious' solution to waning family ties. Entering informal marriage therefore makes strategic sense for teenage girls in a context of unfolding HIV/AIDS-related deaths within their family and unemployment amongst their older siblings.

Phillip Mizen and Yaw Ofori-Kusi in Chapter 3 make a case for using photographs of their living environment taken by street children to get a sense of their perspectives on their everyday lifeworld. The authors argue 'in defence of' the use of photography in social science research, in particular as a means of seeing and knowing the lives of street children. Photographs have the capacity to reveal the intimacy of children's everyday lives, to which aspects of their lives other research techniques such as observations, interviews or group discussions do not give access. Having the children picture and thus comment on their lives in the streets, on road junctions, waste grounds and derelict buildings in and around Ghana's capital city of Accra, teases out elaborate patterns of sharing and mutual help that makes their lives both bearable and meaningful.

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

Acknowledging the difference between 'reality' and the representation of that reality in photographs, the authors adopt what they call a critical realist stance in their use of photography to understand the lives of street children. This stance helps them uncover such important issues as personal hygiene, the sharing of food and the maintenance of moral standards of behaviour revealing the children's ingenuity and creativity. The photographs are not 'images of the pathological, the isolated, sick or diseased', but picture 'children doing what children often do; joking, playing and having fun, sharing friendships and creating relationships, doing nothing, passing time'.

Two contributions engage with working children's living rights. In his chapter on children's role in collective livelihood strategies in rural Ethiopia, Tatek Abebe proposes the notion of 'interdependent agency' as an alternative to all too individualistic interpretations of children's rights (Chapter 4). Claiming that in many parts of the world children are regarded as interdependent beings, he teases out how their daily livelihoods are entwined with the family collective and wider social structures. Focusing on the interrelatedness of rights, duties and obligations, Abebe unearths the multilayered nature of children's agency and the social, personal and spatial context in which it unfolds. Children's agency becomes real in the ways their work is entwined in wider networks of long-term support and in the collaboration between extended family networks (the family collective). Underlying the argument is an effort to link interdependent agency with living rights and to demonstrate that for Gedeo these rights are embedded in the family collective. There is a critical distancing from global top-down policies to grant children abstract rights in order to confer them agency, as this would not only ignore what they already have but also represent a form of denial of their way of life.

Tom O'Neill explores how young carpet weavers (both boys and girls) learn to negotiate their livelihoods and demonstrate a capacity for practical self-determination that enable them, against all odds, to shape their own lives (Chapter 5). The chapter reflects on the authors' fieldwork experience in Nepal by comparing the situation in three different factories and remarking on how children form a footloose labour force that moves in and out of the factories according to the available work and opportunities they may find further afield. Claiming that child protection efforts may often restrict working children's construction of their own futures, the paper takes issue against applying strict age limits in child labour legislation. The young weavers' experiences at work only imperfectly teach them the necessary skills to act in their own interests on a day-to-day basis, and

Cambridge University Press

978-1-107-03151-7 - Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations

Edited by Karl Hanson and Olga Nieuwenhuys

Excerpt

[More information](#)

what they would need most is support in buttressing their emergent ability to navigate the world of work.

These contributions underscore that children's rights cannot be limited to codifications in international or state law, nor to interpretations produced by development agencies. They must include the ways in which children practice their rights. Or to quote Tamanaha's conventionalist way of identifying law emptied of any essentialist feature: 'Law is whatever people identify and treat through their social practices as "law" (or *recht*, or *droit* and so on)' (2000: 313). Children's rights, in other words, are 'all of the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, and so on, the idea of human rights in its different forms' (Goodale and Merry, 2007: 24). The approach implies that the *social practice* of the actors involved at both the local (e.g. children, their families, guardians or representatives; social movements) and the global level (e.g. institutions involved in law codification and agencies intervening on that basis on children's behalf) is what makes children's rights real.

From this perspective, children's rights cease to be a metaphysical abstraction of moral norms or the embodiment of universal natural rights. They are an imperfect compromise negotiated at a certain moment in time and in specific contexts by individuals representing different local and organizational interests and possessing different kinds of knowledge, skills and power. An illustration of this are human rights norms pertaining to children in the context of armed conflict that ban the use of child soldiers by prescribing age limitations for recruitment and participation in hostilities. This international legislative framework has been shaped as the outcome of successful humanitarian advocacy efforts and is largely informed by a 'protectionist' approach to children's experiences of armed conflict that leave aside more 'emancipatory' concerns (Hanson, 2011). International law in the context of armed conflict is but one of the many possible understandings of the rights of the child along with more marginalized or local conceptions, such as those embodied in the social practices of young people that express different forms of agency during armed conflict. We do not, however, suggest that social practice should override international norms. The point we want to make is that there exists a huge distance between the imagined child in the normative framework and the social practices of children, and that children's rights can therefore be made to carry many, even contradictory, meanings (see also Reynolds *et al.*, 2006).