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Nurturing a dialogue

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Special Issue on Children's Rights to Participation and Protection in International Development and Humanitarian Interventions

Children's Rights to Participation and Protection in International Development and Humanitarian Interventions: Nurturing a Dialogue

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Children’s Rights to Participation and Protection in International

Development and Humanitarian Interventions: Nurturing a Dialogue

This introduction provides the rationale for the special issue of the *International Journal of Human Rights* on the topic of the children’s right to participation and protection in international development and humanitarian efforts. It summarises selected contributions relating to an international conference entitled “*Facilitating child participation in international child protection*” that took place October 5-6, 2015 at Ryerson University in Toronto (Canada). The concepts of child participation and child protection are explored. Then, the challenges and opportunities are highlighted regarding the actual and potential participatory role of children and young people in effective child protection. Finally, an overview of the articles included in this collection is provided.

Keywords: Child participation; child protection; international development; humanitarian intervention.

Introduction

Due to the global manifestations of such problems as violence and sexual exploitation, child protection is an important response that inspires a wide range of international policies and programming. These efforts generally tend to focus on harm to individuals and groups, rather than their rights violations¹. In contrast, as Doek outlines, it is essential to stop considering these children and young people¹ only as ‘victims’, as they are rights-holding individuals whose

¹ The phrase ‘children and young people’ is generally used in this editorial, following young people’s typical preference to be referred to as the latter. Broadly, ‘children and young people’ refers to children up to the age of 18, as defined within the United Nations Convention on the Rights of the Child. This editorial refers to ‘children’s rights’, when referring to the human rights framework as applied to children and young people, as this is the phrase most commonly used in the literature.

dignity and physical and psychological integrity must be respected ².

Children's rights require a different approach that respects children and young people and their capacities and involves them as active participants in finding solutions to issues affecting them. However, children's rights to participation continue to be difficult to realize in practice. Clarifying the nature and requirements of effective children and young people's participation in international child protection is challenging. Indeed, a vulnerability or dependency understanding of, and approach to, children and young people is common in international child protection practice since it both requires and justifies the response of child protection ^{3,4}. Children's rights, in contrast, require the respect and implementation of both the protection and participation of children and young people.

Children and young people's participation is necessary for effective and respectful protection, as required by the United Nations (UN) Convention on the Rights of the Child (CRC) ⁵. The most widely endorsed international human rights treaty with 196 ratifications/accessions,² the CRC requires that children under the age of 18 years have the right to participate in accordance with article 12 and other pertinent provisions (e.g. Art. 13-17). Protection is also enunciated in numerous provisions throughout the text.³ Children and young people's participation can have significant impact upon processes and their results. Children and young people should be seen "as survivors and active participants in creating solutions, not just as victims and problems"⁶. As the Special Issue's papers describe, the benefits of children and

² To date, only one country in the world has not ratified the CRC—the United States of America (signed February 16, 1995).

³ For example, see Art. 6 (maximum survival and development) and Art. 19 (protective measures required against 'physical or mental violence, injury or abuse, neglect or negligent treatment'). See further Collins article in this Special Issue.

young people's participation have been widely documented, both for the children and young people involved and the decisions made. We argue that human rights and policy discourses and programming initiatives require more attention to children and young people's participation and need to ensure that commitments and practices move beyond mere rhetoric ⁷. We advance that child protection can improve through meaningful and effective engagement of children and young people to ascertain their realities and respond.

This Special Issue has developed from an international conference entitled "*Facilitating child participation in international child protection*" that took place October 5-6, 2015 at Ryerson University in Toronto (Canada). The conference gathered approximately 60 scholars (faculty & students), young people, policymakers and practitioners from around the world working on issues related to international child protection, children's rights, and children and young people's participation. The conference's specific objectives were: to facilitate the multidisciplinary and multi-sectoral exchange of research-based knowledge about children and young people's participation in international child protection; and to provide an opportunity for the development of collaboration between scholars and practitioners on future longer-term projects on international child protection. Through workshops and keynote addresses by experts from Brazil, Canada, India, South Africa, the United Kingdom, and the United States, participants explored issues related to the definition and effectiveness of children's and young people's participation in international child protection, as well as ways to overcome institutional barriers and to monitor and evaluate progress towards its full realization.⁴ Discussions focussed

⁴ In order to draw conclusions that were as applicable as possible to a wide range of activities, organizations, geographic areas and populations of children, the conference adopted a broad working definition of international child protection as encompassing all efforts aimed at ensuring

on ethical, legal, political, and practical tensions between children's rights to participation and protection as well as global trends and areas of action.⁵ In addition, the conference provided an opportunity to hear from youth conference participants on these issues. Indeed, youth engagement was not only the subject matter but also served the process of the conference. A workshop was held on October 4th, 2015 where young people discussed the central questions of the conference to prepare their subsequent contributions to the event.

As described further below, the articles included in this collection engage with different aspects of the participation- protection dilemma. Some of the issues pondered in this Special Issue include: what is children and young people's participation and who (should) define it? What mechanisms are necessary to ensure that children and young people's participation is meaningful, effective and sustainable? How is children and young people's participation in child protection contexts internationally to be monitored? Furthermore: What are some of the tensions between child protection and children and young people's participation and how can these tensions be successfully negotiated to the benefit of children and young people, their families and societies at large? This introduction provides an overview of key terms and dilemmas for the advancement of children and young people's participation in child protection in international development and humanitarian interventions. We first consider the concepts of children and young people's participation and child protection; there is no consensus on the definition of either term yet some general characteristics are provided to frame the Special Issue. Second, the

that children's rights are protected, while improving the quality of life and wellbeing of young people around the world. Some of the contributions to this Special Issue reflect that understanding.

⁵ Further details are available in the conference summary documentation: Lockwood, Ilana, "Conference Executive Summary" (<https://icpnc.files.wordpress.com/2015/09/fcpicp-conference-executive-summary.pdf>) and "Conference Summary" (<https://icpnc.files.wordpress.com/2015/09/fcpicp-conference-summary-final.pdf>).

challenges and opportunities are addressed regarding the actual and potential participatory role of children and young people in effective child protection, including questioning power and subjacent dynamics and structures. Next set out is an overview of the articles included in this collection, and finally a conclusion with some unaddressed issues for future consideration by scholars, practitioners, and decision-makers working in child protection in diverse settings internationally.

Defining children and young people's participation

The UN Convention on the Rights of the Child (CRC) ⁵ enshrines participation as one of its guiding principles and a key element to the exercise of other rights. Article 12 of the CRC states:

1. States Parties shall assure to the child who is capable of forming his or her own views 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.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The UN Committee on the Rights of the Child explains that child participation is: 'an ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes'.⁸

The principle outlined in Article 12 is inextricably bound to other rights of children such as: the right to express their views and have access to adequate information (Art. 13); freedom of

thought, conscience, and religion (Art. 14); association and peaceful assembly (Art. 15); privacy (Art. 16); and access to information from diverse national and international sources (Art. 17).

These rights are to be realized voluntarily, including children's right to refuse to participate or express their views, if so they prefer.

Besides responding to the children's and young people's preferred level of involvement, scholars and advocates generally agree that the participation of children and young people should also be adequate, inclusive, and meaningful within a continuum of engagement. Adequacy refers to the appropriateness of participation taking into consideration the children's and young people's cognitive and emotional development and maturity, the children's and young people's best interests as well as the child's or young person's subjective perspective in addition to objective factors. Childhood as a dynamic concept, and children's and young people's capacities as evolving, are at the core of the CRC and they need to be considered when assessing the appropriateness of care and the means of participation. The inclusion of children and young people across various levels of acquired participatory skill sets and developmental resilience is also highlighted in the CRC—Art. 23, for instance, extends this and all other rights to mentally or physically disabled children and young people.⁶

According to the UN Committee on the Rights of the Child, children and young people's participation should have some impact on decision-making. To do so, it can take different forms. Participation is not static, but rather it is a process that may change overtime. By framing participation as a continuum of arrangements that may contribute to children and young people's

⁶ Participation is also mentioned for children within the Convention on the Rights of Persons with Disabilities 9. UNGA, 'Convention on the Rights of Persons with Disabilities, a/61/611', (New York: United Nations General Assembly, 2006).

empowerment and positive development, scholars [and practitioners] have come to see this right as including child/youth-driven participation as well as child/youth-adult collaborations. Several typologies of participation have been developed, each with its own strengths and shortcomings (e.g., ¹⁰⁻¹³). Deciding when and how different types and levels of involvement (e.g., sharing information, making suggestions, voicing a preference, negotiating options with adults or making final decisions) constitute genuine participation requires attention to the best interests of the child or young person and the particular context where the child or young person lives, particularly children and young people's status and social structures as they are embedded in the larger specific societal framework. Whereas sometimes the lack of adult involvement can hinder children's and young people's development and access to resources, ¹³ overprotection of children and young people can result in their exclusion from processes that affect them at the expense of the children and young people themselves and substantial loss for the communities where they live. At the same time, attention needs to be paid so that adult-driven participation does not result in manipulation, decoration, or tokenism.

Defining child protection

The terms 'child protection', 'child maltreatment,' 'child abuse' and even 'violence' are often used to refer to all forms of physical, sexual, psychological, spiritual and emotional abuse, neglect, and exploitation. Child protection work aims to prevent and address all forms of ill treatment that harms or is likely to cause harm to a child's or young person's safety, wellbeing, development, or human dignity in all settings, regardless of who commits that act (could be related or stranger to the child or person acting in an official capacity under government or legal authority) and intentionality (could be deliberate abuse or the result of carelessness or

negligence).

The CRC contains various measures for ensuring the protection of children and young people from all forms of abuse, neglect, exploitation and violence. Article 19 states:

1. States Parties shall take all appropriate legislative, administrative, social and educational to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Several other child protection articles in CRC are those dealing with family separation (Art. 9), family reunification across borders (Art. 10), illicit transfer of children (Art. 11), right to privacy, honour and reputation (Art. 16), alternative care (Art. 20), adoption (Art. 21), refugee children (Art. 22), disabled children (Art. 23), harmful practices (Art. 24), periodic review of alternative care (Art. 25), economic exploitation (Art. 32), sexual abuse and exploitation (Art. 34), abduction, sale or trafficking of children (Art. 35), other forms of exploitation (Art. 36), juvenile justice and protection from torture or other cruel, inhuman or degrading treatment or punishment (Art. 37), protection in armed conflict (Art. 38), recovery and reintegration (Art. 39) and children in conflict with the law (Art. 40).

Respect for the child's or young person's views and providing an opportunity for expression of those views in any protection measures as well as in the planning, implementation

and monitoring of child protection systems is crucial across all settings. In fact, the UN Committee on the Rights of the Child ¹⁴ has urged State parties to include in domestic legislation the requirement to elicit children and young people's views, and give them due weight in decision-making in judicial proceedings and other procedures with direct impact on children and young people's lives. Using a rights-based approach, most notably promoting children and young people's participation and agency, is considered as a core child protection competency essential to develop child protection programming ¹⁵. The result of an interagency capacity building initiative to develop a commonly agreed set of competencies that would apply to emergency settings, the Child Protection in Emergencies (CPIE) competency framework outlines skills, behaviours and attitudes expected from child protection workers across child protection programs and contexts, particularly those needed to communicate effectively with children and young people across ages, levels of ability, and cultural backgrounds, and to advocate for children and young people's participation at local and national levels.

Linking participation and protection: Challenges for international mobilization

In seeking to expand these discussions, this Special Issue is particularly concerned with the realization of the right to participation in the context of international development and humanitarian interventions. In low-income settings, limited access to basic resources and services such as housing, healthcare, and education puts additional stress on families and communities to care for children and young people. In situations where the survival, wellbeing or development of children and young people are threatened due to armed conflict, natural disasters, or other emergencies pre-existing child protection issues are likely to persist or even be worsened while new concerns may emerge as a result of the crisis situation (e.g., exploitation and gender-based violence and recruitment and use of children by armed forces or groups).

Children's rights and social implementation in context

Whereas a vulnerability or dependency approach may help galvanize attention and resources in favour of children and young people, concern has been raised regarding whether we overemphasize children and young people's developmental challenges at the exclusion of other rights and at the expense of mobilizing and supporting children and young people's strengths. The latter may, in turn, result in an undermining of children and young people's participation rights in the protection context and a lack of critical engagement with those aspects of the broader structures and specific contexts that interfere with achieving more effective, child and young person respecting, and sustainable child protection solutions. Though originating mostly in high-income countries, research has shown that children and young people often wish to and are able to participate on issues related to their own protection and wellbeing¹⁶⁻¹⁸ and that this can have positive effects on their subjective wellbeing¹⁹⁻²² and safety and stability of care arrangements²⁰. Moreover, children and young people's participation in child protection procedures can result in better decisions that incorporate children and young people's input, and early identification of child maltreatment cases²⁰. Relatedly, exclusion of children and young people can increase fears and anxiety, and reduce children and young people's willingness to share their experiences in the future^{23,24}.

Rights are realized in particular social contexts. The CRC attempts to balance the rights of the individual child or young person and groups of children and young people, with those of their families and the State, e.g., by highlighting the supportive role of families and circumstances in which the State is expected to intervene on behalf of children where protection concerns arise.

Participation being relational and situated, contextual factors need to be carefully considered as they determine whether and how children and young people's participation takes place. Moses²⁵ thus advocates for critically considering the different environments where participation takes place including children and young people's families and communities, as well as national and international legal and socio-economic norms/contexts. Socio-cultural conceptions of childhood and child-adult communication vary across cultural settings and influence actual children and young people's participation. In many societies around the world, children have no right to express their opinions and are rather expected to readily obey parents/elders, who are considered "to know best". This is even in the case of harmful cultural practices (e.g., female circumcision) and in cases of differential treatment and abusive fostering (e.g., child servants and orphans living with relatives)^{26, 27}.

Several principles exist to guide decision-making, such as the best interests of the child or young person and harmonious family and community relations²⁸. Even determining what constitutes the child's or young person's best interest raises questions as to whose perspective should prevail/who should determine it and how to balance the child's or young person's best interest with parents' beliefs and what may be culturally perceived as 'parental rights'. But it must be remembered that parents are not in opposition to children's rights. In fact, the CRC recognizes both children and young people's rights to protection and their place within family and society. It affirms the role of parents and the State in the life of children and young people throughout the instrument. As noted earlier, the instrument does not simply consider children and young people as victims. A child or young person is "not only an object of protection but also as a subject, a person who is in the process of growing up also has the right to decide" about his/her/their welfare and well-being^{29, 30}. Consequently, States parties are required to take all

appropriate measures – legislative, administrative, social and educational – to protect children and young people from all forms of abuse and neglect (Arts. 19 and 32-37) and to support their right to participate in decision-making that significantly affects their lives, to be heard and to facilitate their developing independence (Art. 12).

In summary, children's rights implementation falls primarily on parents who help their child to exercise her rights. If a child or young person is (or is at risk of being) abused, neglected, exploited, then the child or young person may be placed somewhere else, either temporarily or permanently. Yet adults themselves operate within a set of personal and community values that moderate their individual autonomy³¹. Indeed, individual attitudes to participation may reflect broader values and belief systems about children and young people in society as vulnerable and in need of adult protection or unable to act in their own best interest³². As a result, interventions need to engage the broader population at different levels.

Providing clear information, avoiding stereotypical representations of children as passive, vulnerable, and homogeneous, and promoting more balanced, intergenerational relationships, are needed to facilitate effective children and young people's participation^{18, 33, 34}. Participation requires that children and young people are provided with adequate information to base their decisions on and that they understand the consequences of their perspectives. While adults have a responsibility to protect children and young people from harm, scholars have warned about overprotection^{35, 36}. Besides adults' resistance to sharing power and losing some control, there is evidence that adults' skills to communicate with children and young people, lack of understanding of what participation actually entails, and attitudes towards children and young people's participation (participation not considered necessary) and protection (participation considered inappropriate or harmful) often act as barriers to children and young people's

participation^{17, 18, 37, 38}. While striving for more horizontal, equitable relationships, there is a need to develop new models of collaborative decision-making in different cultural contexts to enable children and young people to express their own views and preferences in ways that contribute to their own wellbeing as well as that of their families and communities³⁹.

Measuring process and outcomes: Where we aim to and how we get there

One author in this Special Issue has highlighted the role of monitoring children's rights as a means of advancing accountability and measuring progress⁷ yet much work remains to be made in this realm⁴⁰. Monitoring and evaluation of systems and services are required to assess the process and outcomes of children and young people's participation in relation to protection efforts in diverse contexts and amongst various subgroups of children and young people, including any unintended negative consequences that may ensue. Longitudinal designs are needed to explore the long-term impact of participation on children, young people and communities. Research and evaluation that are integrated in program development, emphasize children and young people's participation, and are sensitive to culture and power relationships are likely to provide better evidence to prevent, respond to, and protect children and young people from violence, exploitation, abuse and neglect. It is our hope that future compilations on these issues will describe empirical studies and span across diverse fields/disciplines.

A strong evidence base on the benefits and challenges of children and young people's participation could also be used in advocacy and training and to inform effective child protection systems. Laws and policies are important yet not sufficient to ensure respect of rights in practice.

⁷ See Jamieson article in this Special Issue.

Raising awareness among caregivers and training professionals is needed to strengthen the capacity to implement existing legislation.

Overview of this Special Issue

This editorial has provided an overview of children and young people's participation in child protection in the context of international protection and humanitarian initiatives, outlining some of the issues around definition and implementation in those settings. It has also emphasized the need to monitor children's rights to increase accountability and measure change in their realization. In the first article in this collection, Collins explores the challenges in genuine children and young people's participation across contexts with her review of conceptualizations in the international human rights framework and literature on international practices. Her piece outlines the tensions between children and young people's participation and their protection in relation to international human rights.

Wright uses the *2015 Facilitating International Child Participation in Child Protection Conference* to examine children and young people's participation and child protection with special attention to ways children, young people and adults can collaborate to ensure children and young people's views are captured in the development of policies, programs, and measures in contexts where children's rights are central.

Next, Tisdall examines ways to realise children and young people's participation, particularly in child protection contexts. She investigates three conceptual ideas – vulnerability, social accountability and co-production – and associated examples of practice, for their usefulness in addressing current challenges for children and young people's participation. In her article, Caputo further examines power imbalances through the political and globalization

frames. She suggests that an interrogation of the imbalances in power can have lasting impact on participation in protection efforts. Finally, Jamieson examines children and young people's participation in relation to residential care facilities in South Africa. She posits that, while laws and policies call for the participation of children and young people, this right is not always actualized. She then discusses the importance of training professionals on children's rights, and including protection and participation mechanisms in monitoring instruments to begin a change towards meaningful rights-based practices.

These papers implicitly raise the issues of: (i) individual child rights as compared to collective child rights; and (ii) whether children's rights intersect with or alternatively can be conceptually collapsed into universal human rights. While the CRC explicitly addresses the topic of indigenous children and young people's collective rights (Art. 30), this is not the case with regard to other vulnerable groups. Further, the Convention does not allow for collective complaints under its optional communications protocol⁴¹. The issue of their relationship between children's rights and human rights is not in fact an esoteric academic one in that specific children's rights are often held by some academics to be derogable⁴² while universal human rights are generally held to be non-derogable⁴³. It is hoped that the papers included in this Special Issue will nurture discussion on the meaning and significance, both theoretically and in a practical sense, of children's rights in the larger human rights framework as set out in international and domestic law.

The research articles in this Special Issue present valuable perspectives on children and young people's participation in child protection, yet some issues remain unaddressed. First of all, institutions conducting, commissioning, and funding research on these issues need to revise their policies and procedures to facilitate the meaningful involvement of children and young people.

Respectful engagement of community partners is time consuming, as it requires mutual knowledge, trust building, and negotiation of roles and expectations. This is particularly relevant when involving children and young people, as permissions first need to be obtained from adult stakeholders before even approaching children and those young people who are not legally emancipated from their legal guardian(s). Building rapport with children and young people, so that they may feel safe and motivated to engage with researchers, also requires time. If we do believe that truly *listening to* and acting *with* children and young people is the way forward, procedural changes need to be made to facilitate it.

Secondly, the papers in this Special Issue collection cannot reference all potential contexts in which children's rights are implicated in significant ways. For instance not addressed is the issue of children's human rights in the context of medical experimentation and treatment and children and young people's participation or lack of participation in the medical decision making, which can profoundly impact their lives in the short and long term. Neither is the issue regarding children and young people's participation in judicial proceedings regarding abuses of children's fundamental human rights.

If children and young people generally can be excluded from participating when adults have concerns about their protection, this is even more so for younger children. O'Kane persuasively documents how young children (i.e. under the age of 8) are systematically excluded from consultations and research on services that they may need when they face humanitarian crises ⁴⁴. However, she also shows that the few studies that have been undertaken – using communication methods that suit younger children – demonstrate significant learning ^{45, 46}.

In recent years, increasing international attention surrounding children and young people's participation in international development and humanitarian interventions has grown.

This Special Issue contributes perspectives from different continents and fields of study/disciplines. At the same time, the papers raise important questions regarding the import of children and young people's participation in international child protection and readers will thereby be encouraged, it is hoped, to consider the implications for children's rights in a broad range of practical settings as well as for child human rights theory. We hope that the arguments presented in this volume will add enthusiasm to ongoing, critical research and mobilization towards effective child protection.

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