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ABBREVIATIONS & ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
AfCHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
AP	Additional Protocol
AU	African Union
CBCPM	Community-based child protection mechanism
CPWG	Child Protection Working Group
CRC	Convention on the Rights of the Child
CRIN	Children's Rights International Network
ECHR	European Convention on Human Rights
ESC	European Social Charter
EU	European Union
FGM/C	Female Genital Mutilation/Cutting
GBV	Gender-based Violence
HIV	Human Immunodeficiency Virus
HRC	Human Rights Council
HRComm	Human Rights Committee
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
i.e.	id est/that is
IGO	Inter – Governmental Organisation
IHRDA	Institute for Human Rights and Development in Africa

ILO	International Labour Organisation
MDGs	Millennium Development Goals
MWC	United Nations Migrant Workers Convention
MTSP	Medium Term Strategic Plan
NGO	Non - Governmental Organisation
OAS	Organisation of African States
OAU	Organisation of African Unity
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations International Children's Emergency Fund
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UN-HABITAT	United Nations Human Settlements Programme
UNTC	United Nations Treaty Collection
WHO	World Health Organisation

GLOSSARY

Child	<p>Art 1 CRC: “[...] a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”</p> <p>Art 2 ACRWC: “[...] a child means every human being below the age of 18 years.”</p> <p>Adolescents are normally referred to as people between the ages of 10 and 18¹.</p>
Alternative Care	<p>It may take the form of <i>informal</i> (any private arrangement provided in a family environment) or <i>formal</i> (ordered by a competent administrative or judicial authority) care. Alternative care may be kinship care; foster care; other forms of family – based or family – like care placements; residential care; or supervised independent living arrangements².</p>
Child Labour	<p>Work undertaken by children under the legal minimum working ages, which are normally laid down by national legislation. The term is often used to describe work that deprives children of their childhood, their potential and their dignity³.</p>
Corporal Punishment	<p>Any punishment in which physical force is used and intended to cause some degree of pain or discomfort, such as smacking, slapping, spanking, scratching, kicking, forcing children to stay in uncomfortable positions etc.⁴.</p>

¹ CPWG, 2012, p 221.

² Idem.

³ Idem.

⁴ CRC/C/GC/13, 18 April 2006, para 24.

Developing Country	A country in which the majority of the population lives on far less money – with far fewer public services- than the population in highly industrialized countries. Incomes are usually under \$2 USD per day and a significant portion of the population lives in extreme poverty ⁵ .
Emerging Country	The term was coined by Antoine van Agtmael and defined in terms of economics and levels of wealth. Emerging markets are economies with low – to – middle per capita income ⁶ .
Foeticide	The act of aborting a foetus because it is female.
Gender	It refers to the roles, responsibilities and identities of women and men, and how these are valued in society. They vary in different cultures and change over time ⁷ .
Harmful Practices	These include, but are not limited to: <ul style="list-style-type: none"> • Corporal punishment or other forms of cruel or degrading forms of punishment • Female genital mutilation • Amputations, binding, scarring and branding • Violent and degrading initiation rites, force – feeding of girls, fattening, virginity testing (inspecting girls’ genitals) • Forced marriage and early marriage • “honour” crimes; “retribution” acts of violence, dowry related death and violence

⁵ World Bank, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20147486~menuPK:344190~pagePK:98400~piPK:98424~theSitePK:95474,00.html>, accessed on 12 June 2014.

⁶ Financial Times, <http://www.ft.com/intl/cms/s/0/be77e600-605f-11db-a716-0000779e2340.html#axzz35AW6JTIN> accessed on 20 June 2014.

⁷ CPWG, 2012, p 226.

- Accusations of “witchcraft” and related harmful practices such as “exorcism”
- Uvulectomy and teeth extraction⁸

Informal Sector This sector encompasses all jobs which are not recognized as normal income sources, and on which taxes are not paid. It usually refers to illegal activity, but could also be interpreted to include legal activity, such as jobs that are performed for something other than money⁹.

Informal Settlement Informal settlements are:

1. areas, where groups of housing units have been constructed on land that the occupants have no legal claim to, or occupy illegally;
2. unplanned settlements and areas, where housing is not in compliance with current planning and building regulations (unauthorized housing)¹⁰

Life Skills Skills and abilities for positive behaviour that enable individuals to adapt to and deal effectively with the demands and challenges of everyday life¹¹.

Mental violence Psychological maltreatment, abuse, verbal abuse and emotional abuse or neglect¹².

Megacity An urban agglomeration with a population of 10 million or more¹³.

Neglect or negligent This means the failure to meet children’s physical and psychological

⁸ CRC/C/GC/13, 18 April 2006, para 29.

⁹ Business Dictionary, <http://www.businessdictionary.com/definition/informal-sector.html>, accessed on 27 July 2014.

¹⁰ OECD, <http://stats.oecd.org/glossary/detail.asp?ID=1351>, accessed on 12 June 2014.

¹¹ CPWG, 2012, p 228.

¹² CRC/C/GC/13, 18 April 2006, para 21.

¹³ UNICEF 2012, p. 10.

treatment	needs, protect them from danger, or obtain medical, birth registration or other services when those responsible for children's care have the means, knowledge and access to services to do so ¹⁴ .
Physical violence	Fatal and non – fatal physical violence, such as corporal punishment, physical bullying and hazing or forced sterilization ¹⁵ .
Urban (area)	The definition of urban varies from country to country and can also vary within one country over time. An urban area can be defined by one or more of the following: administrative criteria or political boundaries, a threshold population size, population density, economic function or the presence of urban characteristics such as paved streets, electric lighting or sewerage ¹⁶ .
Urbanisation	The proportion of a country that is urban. <i>Urban Growth</i> refers to the (relative or absolute) increase in the number of people who live in towns and cities ¹⁷ .
Sexual Abuse and Exploitation	Includes: <ul style="list-style-type: none"> • the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity • the use of children in commercial sexual exploitation • the use of children in audio or visual images of sexual abuse • child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking and sale of children for sexual purposes and forced marriage¹⁸
Slum	This thesis refers to UN-HABITAT's operational definition of slums,

¹⁴ CRC/C/GC/13, 18 April 2006, para 20.

¹⁵ CRC/C/GC/13, 18 April 2006, para 22.

¹⁶ UNICEF 2012, p 10.

¹⁷ Idem.

¹⁸ CRC/C/GC/13, 18 April 2006, para 25.

which uses four indicators to measure physical expressions of slum conditions: lack of water; lack of sanitation; overcrowding; and non-durable housing structures. A fifth indicator – security of tenure – refers to the legal status of the shelter¹⁹.

Stunting

Stunting is measured by height – for – age and considered the most reliable measure of under – nutrition, as it indicates recurrent episodes or prolonged periods of inadequate food intake, calorie and/or protein deficiency or persistent or recurrent ill – health²⁰.

**Torture and
inhuman or
degrading
treatment or
punishment**

This includes violence against children in order to extract a confession, to extra judicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law – enforcement officers, staff of residential and other institutions and persons who have power over children, including non – State armed actors²¹.

¹⁹ UN-HABITAT, 2006/7, p. vi.

²⁰ UNICEF, 2012, p. 20.

²¹ CRC/C/GC/13, 18 April 2006, para 26.

CHAPTER I

INTRODUCTION

According to recent studies, already half of all people live in urban areas. Estimates show that by 2050 over two thirds (64%) of the global population will call a city their home²². Most of this growth is taking place in low- and middle – income countries, i.e. Africa has a larger urban population than North America or Western Europe and more than 6 in 10 Africans who live in urban areas reside in slums, which most governments regard as illegal settlements²³. Nearly 10 per cent of the urban population is found in megacities, while most urban growth takes place in smaller cities and towns²⁴.

This trend of urbanisation offers huge potential for the development of children, as urban areas offer better access to and higher standards of health, education, protection and sanitation, with more schools, hospitals and other institutions available. Moreover, with national and international non – governmental and other organisations being more visible and active in cities, political and social participation of children is strengthened and promoted. All in all, cities do offer opportunities to increase income, mobilise for political action and to benefit from education as well as health and social services. Cities also attract and generate wealth, jobs and investments, associating them with economic development, higher incomes and stronger institutions²⁵. In both developed and developing countries, cities generate significant portions of gross domestic product and

²²WHO/UN-HABITAT, 2010, p. ix.

²³Kostelny K., et al. 2013, p. 27.

²⁴UNICEF, 2012, p. 2.

²⁵UNICEF, 2012, p.1.

national wealth and they create development opportunities, jobs and investment²⁶.

Children in urban areas are often better off than their rural counterparts with a better access to social services, higher literacy rates and longer life expectancy, but urban advances have been uneven and millions of children in marginalized urban settings confront daily challenges and deprivations of their rights²⁷. When assessing children's well – being, a comparison is usually drawn between the indicators for children in rural areas and those in urban settings, giving the image of children living in urban settings being better off. These comparisons, however, rest on figures in which the hardships faced by poorer urban children are obscured by the wealth of communities elsewhere in the same city²⁸. Detailed information is often hard to come by, but, if found, reveals wide disparities in children's rate of survival, nutritional status and education, as children living in informal settlements and impoverished neighbourhoods are excluded from essential services and social protection²⁹. Desolate housing and sanitary conditions foster the transmission of diseases, such as pneumonia and diarrhoea, which are among the leading causes of children dying before reaching the age of 5. In Nairobi's Slums, for example, the infant mortality rate lies at 9.1 %, compared to 7.6% in rural areas and 5.7% in other urban areas³⁰. Children living on the streets are also often more at risk of becoming victims of violence, such as sexual abuse, child labour, trafficking or other forms of physical or mental violence harming their overall well – being and development.

To fully use the potential cities have to offer and avoid the further marginalisation of

²⁶ WHO/UN – HABITAT, 2010, p. 6.

²⁷ UNICEF, 2012, p. 1.

²⁸ Idem.

²⁹ UNICEF, 2012, p. 2.

³⁰ Rapid urbanisation has been taking place in Kenya largely in a context of weak economic development and poor governance. Between 1980 and 2009, the number of people living in Nairobi increased from 862,000 to 3.4 million. Estimates indicate that 60 per cent live in slums covering only 5 per cent of the city's residential land. (UNICEF, 2012, p. 20)

poorer children, resources and possibilities need to be allocated and children living in informal settlements and impoverished neighbourhoods have to be included in essential formal social services and social protection, otherwise urbanisation will most likely lead to even wider social disparities. Urban areas in Sub – Saharan Africa show the highest level of social disparities. According to the United Nations Human Settlements Programme (UN-HABITAT), one city dweller in three lives in slum conditions, lacking durable housing, sufficient living area, security of tenure in overcrowded, unhygienic places³¹ characterized by lack of access to basic necessities, weak infrastructure and inadequate services, unemployment, pollution, traffic, crime, a high cost of living, poor service coverage and competition over resources and is exposed to interacting risks such as family separation, living and working on the streets, sexual exploitation and abuse, HIV/AIDS and violence³².

Children require particular attention as they are often the most vulnerable and face the greatest violations of their rights. Despite children worldwide having the full range of civil, political, social, cultural and economic rights recognized by the Convention on the Rights of the Child³³ and also through specific regional instruments such as the African Charter on the Rights and Welfare of the Child, these rights are not realized equally. Evidence shows that more children want for shelter and sanitation than are deprived of food, education and health care, and that the poor sanitation, lack of ventilation, overcrowding and inadequate natural light common in the homes of the urban poor are responsible for chronic ailments among their children³⁴, emphasizing the need for an environment fit for the fulfilment of all children's rights and their best possible development.

³¹ UN-HABITAT, 2006/7, pp. vi-vii.

³² Kostelny K., et al. 2013, p. 27.

³³ Currently, 194 countries are party to the CRC, including every member of the UN except Somalia, South Sudan and the USA (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en accessed on 21 June 2014).

³⁴ Habib, R.R. et al., 2009, pp. 174 – 181.

The aim of this thesis is to bring all these factors, urban benefits, challenges and children's rights into one paper and examine the connections between them, especially whether the fulfilment of children's rights is, in fact, stronger influenced in overcrowded urban settlements than in other living areas and if there are numbers to prove that.

The remaining part of Chapter I gives a review of the research question and closes with explanations concerning the methodology used. For the sake of length, clarity and personal interest this thesis concentrates on findings concerning the African continent.

RESEARCH QUESTIONS

1. What are children's rights in an urban context and child protection systems, specifically in the African context?
 - a. Are they codified?
 - b. If so, where and how are they applicable?
2. What are urbanisation and its consequences?
3. To what extent does an urban area of where children live and grow up influence the fulfilment of their rights and protection?

METHODOLOGY

The thesis was completed between March and July 2013. The main research method employed to answer the research question was a review of existing literature and studies in the fields of children's rights, urbanisation and possible connections between these two.

Additionally the author spent five months in Nairobi, but due to budget and resource limitations could not perform a field study or interviews, but had to rely on already existing data collected by other agencies such as the United Nations Children's Fund or Save the Children. A detailed description of the literature, documents and internet based resources used can be found at the end of this thesis in the bibliography section.

The rest of the thesis is organized as follows: Chapter II explores Children's Rights, Children's Rights in Africa and Child Protection Systems; Chapter III examines the benefits and challenges of urbanisation for children; and the conclusion in Chapter IV reflects on the relationship of children's and urbanisation and on possible obligations and actions to be taken by governments and other stakeholders

CHAPTER II: CHILDREN'S RIGHTS AND PROTECTION

In principle, the rights guaranteed in the major general human rights conventions apply to individual adults and children alike, specifically that children benefit from all of the rights enunciated in them³⁵. Of particular importance in this regard are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), as well as the corresponding Optional Protocols. Worth mentioning are, of course, also the regional instruments, such as the European Convention on Human Rights (ECHR) and its protocols, the European Social Charta (ESC), the African Charter on Human and Peoples' Rights (AfCHPR), the American Convention on Human Rights (ACHR), and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"). All these conventions already contain provisions specifically concerning children³⁶.

CONVENTION ON THE RIGHTS OF THE CHILD

Despite these general provisions and the widely acknowledged universality of human rights, i.e. all human beings in all countries of the world should enjoy human rights considered as customary law or *ius cogens* equally, children require special protection and special rights as they are often in a position of specific vulnerability. A major step towards the realization of this special protection, drawing attention to the specific needs and vulnerability of children, was the adoption of the Convention on the Rights of the Child (CRC) by the General Assembly of the United Nations on 20 November 1989. The CRC then

³⁵ With regard to the ICCPR: U.N. Doc. HRI/GEN/1/Rev. 1 at 23 (1994), para. 2.

³⁶ Art 6, 10, 14, 23 and 24 ICCPR; Art 10 and 12 ICESCR; Art 5 ECHR; Art 7 and 17 ESC; Art 18 AfCHPR; Art 4, 13, 17 and 19 ACHR; Art 7, 15 and 16 of the Protocol of San Salvador.

entered into force on 02 September 1990³⁷ as the first comprehensive human rights treaty incorporating all dimensions of human rights in one single treaty: civil, political, cultural, economic and social rights³⁸. Apart from its rather quick entry into force, it has also basically received universal recognition: 194 countries have become State Parties to the Convention as of 2014³⁹. Legally binding on States parties, the Convention details universally recognized norms and standards concerning the protection and promotion of children's rights worldwide. It combines a right to protection through the State, parents and relevant institutions with the recognition that the child is a holder of participatory rights and freedoms⁴⁰. This is manifested, inter alia, in Art 12, which states that the child holds rights which have an influence on her or his life, and not only rights derived from his or her vulnerability or dependency on adults⁴¹. The specific rights granted in the CRC are primarily directed at children's inclusion into society, making their voices heard and providing them with de facto equality.

The CRC, however, was not the first international document considering children's rights. Already under the auspices of the League of Nations, a special committee had been established to deal with questions relating to the protection of children⁴², adopting various conventions⁴³, most prominently in 1924, when the Assembly of the League of Nations agreed on the Declaration of the Rights of the Child ("Declaration of Geneva")⁴⁴. When looking at this Declaration, it is evident that the drafters were not thinking in terms of rights of children, but much more in terms of duties of "men and women of all nations"

³⁷ UNTC, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en, accessed on 21 June 2014.

³⁸ Sax, 2012, p.424.

³⁹ Idem.

⁴⁰ UNICEF, 2012, p. 16.

⁴¹ CRC/C/GC/12, 20 July 2009, para 7.

⁴² Detrick, 1999, p. 13.

⁴³ For example the 1921 International Convention for the Suppression of the Traffic in Women and Children or the 1926 Slavery Convention.

⁴⁴ Geneva Declaration, 1924, <http://www.un-documents.net/gdrc1924.htm> accessed on 22 June 2014.

towards children.

After the horrifying experiences of the Second World War and the suffering it had caused especially to children, the General Assembly of the United Nations immediately set forth to adopt a modified children's rights declaration⁴⁵, however, it was not until 20 November 1959 that the Declaration of the Rights of the Child was finally adopted⁴⁶. This declaration consists of a preamble and ten principles, formulated in terms of rights of children, not only giving attention to a child's material, but also its immaterial needs, i.e. love and understanding. Almost twenty years later, in 1978, the Polish Government submitted the idea to mark the following year's International Year of the Child by a new international document on children⁴⁷. In 1979, the UN Commission on Human Rights established a working group on the question of a convention on the rights of the child, which was to draw up the text of such a convention, including the views, observations and suggestions by Member States, specialized agencies, regional IGOs and NGOs, which then, after eleven sessions, adopted, and subsequently transmitted to the Commission, the CRC⁴⁸.

The CRC consists of a preamble and 54 articles, divided into three parts:

- Part I (Art 1 to 41) contains the substantive provisions of the CRC and provides for a number of general obligations of State Parties;
- Part II (Articles 42 to 45) contains its procedural provisions, dealing with the measures of international implementation;
- Part III (Articles 46 to 54) provides for a number of final clauses, dealing with

⁴⁵ Detrick, 1999, p. 14.

⁴⁶ Declaration of the Rights of the Child, 1959, <http://www.unicef.org/malaysia/1959-Declaration-of-the-Rights-of-the-Child.pdf> accessed on 22 June 2014.

⁴⁷ Sax, 2012, p. 424.

⁴⁸ Detrick, 1999, pp. 16-18.

matters such as signature, ratification and accession⁴⁹.

The CRC brings together rights addressing almost all settings relevant to young people, such as family and alternative care arrangements, access to all forms of education, adequate accommodation and health services and provides for other fundamental rights such as free speech and privacy, but also emphasises rights of specific groups of children, i.e. the inclusions of children with disabilities. It also stretches out to the area of international humanitarian law by setting standards for the protection of children in the context of armed conflicts. All these rights are often grouped along three categories, namely protection, provision and participation rights⁵⁰.

The measures to implement the CRC's provisions extend beyond promotional action on children's rights and it also does not stop with the introduction of legal reforms⁵¹. In its General Comment 5 (2003), the CRC Committee has outlined general measures of implementation to be taken by governments. The Committee first identifies implementation as the process whereby States parties take action to ensure the realisation of all rights to the Convention for all children in their jurisdiction. For this the State needs to engage all sectors of society and, of course, children themselves⁵². Before talking in detail about legislative and administrative measures the State parties ought to develop it is crucial to understand that the main starting point for realising the rights guaranteed in the Convention for all children is to make the principles and provisions of the CRC widely known (as stated in Art 42 CRC). States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society, which should include information on the bodies involved in implementation and monitoring and how to contact

⁴⁹ Detrick, 1999, pp.21-22.

⁵⁰ Sax, 2012, p 425.

⁵¹ Sax, 2012, p. 428.

⁵² CRC/GC/2003/5, 27 November 2003, para. 1.

them. Children should learn about the content of the CRC through human rights education, but also by seeing human rights standards implemented in practice at home, in school and within the community⁵³.

The measures identified by the Committee are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes⁵⁴. The measures identified include the review of existing reservations to CRC provisions, ensure a comprehensive human rights framework, introduce legislation to ensure compatibility of domestic law with CRC standards, provide for effective remedies in case of violations of children's rights, develop a comprehensive rights – based implementation strategy, provide for the necessary coordination mechanisms between relevant actors, and ensure such coordination also in decentralised systems of government. States must also ensure that, in case of services being privatised adequate mechanisms for monitoring and child impact assessment are established. Furthermore, governments ought to initiate research and ensure collection of disaggregated data in order to provide for a sound empirical basis for policy development; analyse budgets and priorities in resource allocation in light of the child best interests principle, ensure adequate training and capacity - building, provide for information and awareness - raising measures, cooperate with civil society institutions, and create independent human rights institutions, such as child and youth ombudspersons, for monitoring of CRC compliance⁵⁵.

In this regard, legislative measures refer to legislation, including the budget and the

⁵³ CRC/GC/2003/5, 27 November 2003, paras 66 – 68.

⁵⁴ CRC/GC/2003/5, 27 November 2003, para. 9.

⁵⁵ Sax, 2012, p. 428.

implementing and enforcing measures, which comprise national provincial and municipal laws and all relevant regulations, which define frameworks, systems, mechanisms and the roles and responsibilities of concerned agencies and competent officers. Administrative measures should reflect the governments' obligations to create policies, programmes, monitoring and oversight mechanisms⁵⁶.

More detailed attention to the Convention's content shall be given in the next sub – chapters.

Art 43 of the CRC establishes an independent Committee on the Rights of the Child “for the purpose of examining the progress made by State Parties in achieving the realization of the obligations undertaken in the present Convention.” The Committee consists of eighteen experts, who meet three times a year in Geneva for three weeks each. The main monitoring instrument of the Committee consists of a reporting procedure: according to Art 44 CRC⁵⁷ States Parties are obligated to regularly⁵⁸ submit reports to the Committee on the measures they have adopted, the progress that has been made and the difficulties they have encountered. It has also become prominent for NGOs, UNICEF and other UN organs to prepare and submit their own assessments and country specific information (“shadow report”)⁵⁹. They may then present their reports during a pre – sessional meeting

⁵⁶ e.g. CRC/C/GC/13, 18 April 2006, para 38 – 42.

⁵⁷ Art 44 CRC: *1. States Parties undertake to submit to the Committee, through the Secretary General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights (a) within two years of the entry into force of the Convention for the State Party concerned; (b) thereafter every five years. [...]* <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> accessed on 22 June 2014.

⁵⁸ Idem.

⁵⁹ Art 45 CRC: *In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention: (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies [...] as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their*

of the Committee, which will then discuss areas of particular interest at its next sessions with an official government delegation. By the end of a session, the Committee adopts its “concluding observations” on the respective country, including positive developments, areas of concern and recommendations. These observations are not legally binding, but carry a high political value as compliance indicates strong political will to protect children’s rights effectively. The Committee additionally regularly holds a public Day of General Discussion as an annual expert forum and issues statements (General Comments) providing guidance on the interpretation of the Convention. Since 2011, after the tenth ratification of the third OP, it is also authorized to deal with individual complaints of children regarding specific violations of their rights under the CRC⁶⁰.

respective mandates. The Committee may invite the specialized agencies [...] organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities; (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies [...] any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee’s observations and suggestions, if any, on these requests or indications; (c) The Committee may recommend to the General Assembly to request the Secretary General to undertake on its behalf studies on specific issues relating to the rights of the child; (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> accessed on 22 June 2014.

⁶⁰ Sax, 2012, pp. 428 – 430.

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The “African system” for the protection of human rights might be the most recent one of regional human rights protection systems to develop⁶¹, but the notion of protecting children and their rights is not a new one to the African continent⁶². The first (non – binding) Declaration on the Rights and Welfare of the Child has been adopted by the Assembly of Heads of State and Government of African Unity in 1979 at its sixteenth session in Monrovia, where the Organisation of African Unity (OAU) already noted a need to consider and protect children’s rights. There have then been a number of Declarations and Resolutions adopted by the OAU/African Union (AU) related to children’s issues such as development, health and children affected by armed conflict⁶³.

Regarded as the first regional treaty and most important document in this context, however, is the African Charter on the Rights and Welfare of the Child (ACRWC), which was adopted by the OAU (now the African Union) in July 1990 and entered into force in November 1999⁶⁴, after obtaining the fifteen states’ ratifications necessary to do so⁶⁵. According to Lloyd, the ACRWC is the only treaty providing a comprehensive mechanism for the protection and promotion of children’s rights at a regional level⁶⁶. Similar to the CRC it is a comprehensive legal instrument guaranteeing rights and defining principles for the promotion and protection of children’s rights, covering the whole spectrum of civil, political, economic, social and cultural rights. The ACRWC was created partly to complement the CRC, but also because African countries were under – represented in the drafting process of the CRC and African States felt the need to explicitly address issues

⁶¹ Lober, 2012, p. 247.

⁶² Murray, 2004, p. 165.

⁶³ Sloth – Nielsen, 2008, p.3.

⁶⁴ CRIN, <https://www.crin.org/en/library/publications/african-committee-rights-and-welfare-child> accessed on 22 June 2014.

⁶⁵ Murray, 2004, p.166.

⁶⁶ Lloyd, 2008, p. 33.

specific to the African continent, such as children living under apartheid, harmful traditional practices against the girl child, internal conflicts and displacement, the rights of children of imprisoned mothers, poor and unsanitary living conditions, the African conception of communities' responsibilities and duties, weak enforcement and monitoring mechanisms, role of the family in adoption and fostering, and the duties and responsibilities of the child towards the family and community⁶⁷. The CRC aims at satisfying a diverse cultural international community, leaving some substantial provisions rather vague. This was one of the main reasons for the creation of the ACRWC – to guarantee children's rights in familiar African language, giving priority to the children's cultural heritage, historical background and the values of African civilisation⁶⁸. It recalls and reaffirms the Declaration of 1979 and recognizes that the child occupies a unique and privileged position in the African society and that children should grow up in family environment in an atmosphere of happiness, love and understanding⁶⁹.

The ACRWC consists of a preamble and 48 articles, divided into four sections:

- Chapter I (Art 1 to 31) contains rights and duties of the main stakeholders;
- Chapter II (Art 32 to 41) establishes and organises the African Committee of Experts on the Rights and Welfare of the Child (ACERWC);
- Chapter III (Art 42 to 45) contains provisions on the mandate and procedure of the ACERWC;
- Chapter IV provides for a number of miscellaneous provisions.

The ACERWC was established according to Chapter II of the ACRWC. It is a body of 11

⁶⁷ UNICEF, http://www.unicef.org/esaro/children_youth_5930.html accessed on 22 June 2014.

⁶⁸ Lloyd, 2008, pp. 33 – 34.

⁶⁹ Preamble of the ACRWC, <http://www1.umn.edu/humanrts/africa/afchild.htm> accessed on 23 June 2014.

members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child, serving in their personal capacity⁷⁰. The general mandate of the Committee is to protect and promote the rights enshrined in the Charter and more specifically to collect and document information, commission inter – disciplinary assessments of situations on African problems in the field of children’s rights and welfare, organise meetings, encourage national and local institutions concerned with children’s rights, and give its views and make recommendations to governments. Furthermore, it can formulate and lay down principles to protect children’s rights⁷¹. Art 42 further states that the ACERWC may also interpret the provisions of the Charter at the request of a State Party, an institution of the AU or any other person or institution recognized by the AU or any State Party.

Similarly to the CRC, the ACERWC’s mandate includes receiving complaints and communications from stakeholders mentioned in Art 44 ACRWC. However, contrary to the CRC and its Committee’s original capacities, the ACRWC included an individual complaints mechanism in its Art 44⁷² from the very beginning, establishing it as the first and (until the ratification of the third OP) only child rights treaty body worldwide with such a capacity⁷³. Lloyd contends that, while it could be argued that the inclusion of a complaints mechanism runs counter to African culture and tradition, which emphasizes community – based resolution systems, this individualistic complaints procedure reflects a move towards recognizing the inherent vulnerability of children and provides a possibility for the whole of society to take responsibility for the protection of children’s rights, reflecting a

⁷⁰ Art 33 ACRWC, <http://www1.umn.edu/humanrts/africa/afchild.htm> accessed on 23 June 2014.

⁷¹ Art 42 ACRWC, <http://www1.umn.edu/humanrts/africa/afchild.htm> accessed on 23 June 2014.

⁷² Art 44 ACRWC: 1. *The Committee may receive communications, from any person, group or non – governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.* 2. *Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.* <http://www1.umn.edu/humanrts/africa/afchild.htm> accessed on 23 June 2014.

⁷³ IHRDA, <http://www.ihrda.org/515-2/>, accessed on 01 July 2014.

very traditional African approach: society and the community protecting each other⁷⁴.

Also, an investigation procedure is part of the communications procedure for the ACERWC as provided for by Art 45⁷⁵. The ACERWC may seek any relevant information regarding the implementation of the provisions contained in the ACRWC.

⁷⁴ Lloyd, 2008, p. 48.

⁷⁵ Art 45 ACRWC: 1. *The Committee may resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the State Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.* 2. *The Committee shall submit to each Ordinary Session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under Art 44 of this Charter.* 3. *The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.* 4. *States Parties shall make the Committee's reports widely available to the public in their own countries.* <http://www1.umn.edu/humanrts/africa/afchild.htm> accessed on 23 June 2014.

COMMON RIGHTS AND OBLIGATIONS

To gain a holistic picture of children's rights (especially on the African continent), one must look at both Conventions and its provisions, however, this Thesis will not discuss every individual provision, but only those relevant in the context of children's situations in a rapidly urbanising environment.

The ACRWC⁷⁶, as well as the CRC⁷⁷, defines a child as *any human being below the age of eighteen years*. We can already find the first difference here, as the CRC, contrary to the ACRWC, further attaches a limitation ("...unless under the law applicable to the child, majority is attained earlier"). According to Lloyd, this provision is weak with a lack of specific protection in the African context, especially in relation to child betrothals, child participation in armed conflict and child labour⁷⁸.

Setting the general age limit at eighteen years leaves us with a huge and very diverse group of people, ranging from babies to basically adults. As Sax points out, in all measures targeting children within the meaning of the CRC, a first step must always be to clearly identify the actual target/age group under consideration in order to devise the most relevant measures. The need for age sensitivity in all actions concerning children should therefore be reviewed in relation to their function and the definition must never be used as an argument against access to certain rights⁷⁹.

⁷⁶ Art 2 ACRWC: *For the purpose of this Charter, a child means every human being below the age of 18 years.*

⁷⁷ Art 1 CRC: *For the purpose of this Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*

⁷⁸ Lloyd, 2008, p. 35.

⁷⁹ Sax, 2012, p. 425 – 426.

Both conventions contain a comprehensive and inclusive provision indicating the scope of *general obligations and provisions* of state parties⁸⁰. When reading the respective articles it is again clear that the ACRWC highlights the importance of states adhering to the principles and putting them into the African context⁸¹. The CRC, as well as the ACRWC, obliges states to undertake all appropriate measures to implement the rights guaranteed. With regard to the CRC these measures include the review of existing reservations to CRC provisions, ensure a comprehensive human rights framework, introduce legislation to ensure compatibility of domestic law with CRC standards, provide for effective remedies in case of violations of children's rights, develop a comprehensive rights – based implementation strategy, and provide for the necessary coordination mechanisms between relevant actors⁸². *Measures* to implement the ACRWC's provisions include the adoption of legislation, the review and introduction of policies and other administrative measures, as well as budgetary allocation and they should also promote positive cultural values and traditions as well as measures which discourage these traditions and values which are inconsistent with the rights, duties and obligation contained in the ACRWC⁸³.

⁸⁰ Art 4 CRC: *States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.*

Art 1 ACRWC: *1. The Member States of the OAU Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to take the necessary steps, in accordance with their constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter. 2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international convention of agreement in force in that State. 3. Any custom, tradition, or cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.*

⁸¹ Lloyd, 2008, p. 36.

⁸² Sax, 2012, p.428.

⁸³ Idem.

General Principles

Both Conventions contain general principles for the protection of children's rights, forming the core of the Conventions through which all others should be interpreted and implemented⁸⁴.

For the CRC, the general principles identified by the Committee assigning them overarching importance are:

- the obligation to ensure all children's rights without any discrimination (Art 2);
- the best interests of the child (Art 3)⁸⁵;
- the child's right to life (Art 6);
- the child's right to participation (Art 12)⁸⁶.

According to the ACERWC these guiding principles are:

- non – discrimination (Art 3 and 26);
- the best interests of the child (Art 4);
- life, survival and development (Art 5)
- respect for the views of the child (Art 7)⁸⁷.

The **principle of non – discrimination** is not a unique children's rights related guarantee, but it is provided for in various international Convention and treaties⁸⁸, and also the CRC's

⁸⁴ Lloyd, 2008, p. 36.

⁸⁵ It is also referred to in other articles of the CRC, namely Art 9(1) (3), 18(1), 21, 37(c) and 40(2)(iii).

⁸⁶ CRC/GC/2003/5, 27 November 2003, para 12.

⁸⁷ Cmttee/ACRWC/2 II.Rev 2., 17 – 21 February 2003.

⁸⁸ See for example: Art 2 para 1, Art 24, Art 26 of the ICCPR, the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) or the UN Convention on the Rights of Persons with Disabilities

wording is based on the ICCPR⁸⁹. The obligation to respect and ensure under the ICCPR, has acquired a certain meaning in the international context that includes both negative and positive obligations of states, i.e. the obligation to respect requires a State Party not to violate the rights in question, while the obligation to ensure implies an affirmative obligation on the part of the State Party to take whatever measures necessary to enable individuals to enjoy and exercise certain rights⁹⁰. According to Art 2(1) CRC the basic obligation of each State is therefore to protect and ensure the designated rights to each child within its jurisdiction, i.e. to every child residing or otherwise present in the territory of the State Party, whether or not the child is a national of said State.

When commenting on the Non – discrimination clause in the ICCPR⁹¹, the Human Rights Committee has noted that the ICCPR has neither defined nor indicated what constitutes discrimination. After referring to Art 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Racial Discrimination it explains that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, nation or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. This, however, does not mean identical treatment in every instance⁹². Not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if

(CRPD).

⁸⁹ Art 2 CRC: *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

⁹⁰ Detrick, 1999, p. 68.

⁹¹ Human Rights Committee, General Comment 18.

⁹² Human Rights Committee, General Comment 18, paras 7-8.

the aim is to achieve a purpose which is legitimate under the Covenant⁹³.

Seeing that the concept of the prohibition of discrimination is weaved in all major international convention and treaties like a red thread, this rather general definition by the Human Rights Committee, can therefore also be called upon when trying to identify this principle in the context of children's rights.

In our context the principle of non - discrimination explicitly prohibits the discrimination between children and groups of children. Implicitly, however, it must also be regarded as a ban on discrimination of children in relation to adults, adding more weight to the intergenerational dimension of this provision. This reaffirms the entire concept of children's rights being based on the understanding of children as bearers of equal rights as adults, where simply "being a child" cannot be seen by itself as a sufficient reason for a different treatment⁹⁴. The CRC Committee elaborates that the non – discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. It highlights in particular the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified and that addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes⁹⁵. The principle of non – discrimination is also significant when speaking of fulfilling other rights contained in the CRC, such as the Rights to Health, Education and Protection.

With regard to the ACRWC, the principle of non – discrimination additionally highlights the requirement to always ensure actions, decisions, policies and legislative enactments to

⁹³ Human Rights Committee, General Comment 18, para 13.

⁹⁴ Sax, 2012, p. 426.

⁹⁵ CRC/GC/2003/5, 27 November 2003, para 12.

take heed of a child's rights to belong and to be considered equal, not only among their own group, but as members of the whole community⁹⁶. While the CRC confines State parties to ensure children only within their jurisdiction to receive the rights in the CRC without discrimination, the ACRWC does not include such a limitation, implying that States parties and individuals should ensure respect for, and realisation of, children's rights without discrimination across the continent, which has far reaching consequences for joint efforts and ventures with African states in need of additional assistance to ensure compliance with the ACRWC's provisions. Additionally, the ACRWC has included explicit provisions on various forms of potential discrimination, to ensure protection to children in certain circumstances, such as discriminatory regimes, war and conflict, directly confronting some of the most relevant issues affecting issues in Africa⁹⁷.

The CRC Committee has dedicated its General Comment No. 14 to the interpretation and definition of the **best interests principle**⁹⁸ and its requirements for due consideration, especially in judicial and administrative decisions as well as in other actions concerning the child as an individual or children in general as a specific group⁹⁹. The provision¹⁰⁰ constitutes the cornerstone through the entire child rights framework, as it fulfils several key functions: it provides the main anchor and entry point for children's rights concerns in any decision making process affecting children¹⁰¹; it offers clarification in case of

⁹⁶ Lloyd, 2008, p. 37.

⁹⁷ Lloyd, 2008, pp. 37 – 38.

⁹⁸ The best interests principle is also embodied in other international documents, such as the 1959 UN Declaration of the Rights of the Child (Principles 2 and 7), the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of the Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (Art 5) and the 1979 Convention on the Elimination of all Forms of Discrimination against Women (Art. 5[b], 16[1d]).

⁹⁹ CRC/C/GC/14, 29 May 2013, para 10.

¹⁰⁰ Art 3 para 1 CRC: *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

¹⁰¹ This could be judicial and administrative decisions as well as the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives and guidelines or other implementation

interpretation needs by linking CRC provisions to better understand and balance the interests at stake; and it also gives competence to appropriate authorities to actually intervene in situations, where the best interests of a child are under threat¹⁰². It is a threefold concept and serves as a

1. substantive right, creating an obligation for States to have children's best interests assessed and taken as a primary consideration when reaching a decision;
2. fundamental, interpretative legal principle, ensuring that, when interpreting legal provisions, only the interpretation which most effectively serves the child's best interests should be chosen;
3. rule of procedure, giving procedural guarantees to the assessment and determination of the best interests of children to show that the justification of a decision has taken the children's rights explicitly into account¹⁰³.

According to the CRC Committee's General Comment, the best interest principle also establishes a threefold obligatory concept, as it includes

1. the obligation to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution;
2. the obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration;
3. the obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private

measures taken by governments or decisions made by civil society entities and the private sector (CRC/C/GC/14, 29 May 2013, para 10 & 12.).

¹⁰² Sax, 2012, p. 427.

¹⁰³ CRC/C/GC/14, 29 May 2013, para 6.

sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child¹⁰⁴.

This principle being *a primary consideration* means that the child's best interest may not be considered on the same level as all other considerations, but needs to be highlighted nevertheless. This is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. The use of the expression "a primary consideration", however, indicates that the best interest are a consideration of first importance among other considerations, but that they not have absolute priority. According to the CRC's travaux préparatoires it was stated that there were situations in which the competing interests of justice and of society at large should be of equal importance¹⁰⁵.

With respect to adoption, the best interests' principle is further strengthened as it is not only a, but *the* paramount consideration.

The Committee has, however, not only defined when and how to use the best interests principle, it has also tried to identify and define its content, which is rather difficult and unsatisfactory, as there will always be different concepts, influenced by societal norms, culture, history, religion etc., of what exactly the child's best interest should be. This is probably why the Committee states right away, that the concept of the child's best interest is complex and must be determined on a case-by-case basis through the interpretation and implementation of Art 3(1) in line with the other provisions of the Convention. The Committee further elaborates that the principle should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned,

¹⁰⁴ CRC/C/GC/14, 29 May 2013, para 14.

¹⁰⁵ Detrick, 1999, p. 91.

taking into consideration their personal context, situation and needs¹⁰⁶. This flexibility of the concept allows it to be responsive to the situation of individual children and to evolve knowledge about child development. However, certain elements should be taken into account, when assessing the child's best interest:

1. The child's views;
2. the child's identity;
3. preservation of the family environment and maintaining relations;
4. care, protection and safety of the child;
5. situation of vulnerability;
6. the child's right to health;
7. the child's right to education¹⁰⁷.

As not every element will be relevant in each case, they must be weighed against each other with the purpose of assessing and determining the best interests of the child to ensure the full and effective enjoyment of the rights recognised in the Convention and its Optional Protocols, and the holistic development of the child¹⁰⁸. As it has already been mentioned, the best interest principle needs to be looked at in combination with other general principles of the Convention in order to gain a broader picture of the obligations and content it entails:

1. The child's best interests and the right to non – discrimination, which is not only a passive obligation, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention;

¹⁰⁶ CRC/C/GC/14, 29 May 2013, para 32.

¹⁰⁷ CRC/C/GC/14, 29 May 2013, para 52 – 79.

¹⁰⁸ CRC/C/GC/14, 29 May 2013, para 80-82.

2. The child's best interests and the right to life, survival and development, which obligates States to create an environment that respects human dignity and ensures the holistic development of every child.
3. The child's best interests and the right to be heard. The two articles have complimentary roles, as the first one aims to realize the child's best interest and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests¹⁰⁹. Interestingly, in the ACRWC these two provisions are contained in the same article already.

Within the framework of the ACRWC, the **best interests principle**¹¹⁰ is paramount over the other three principles and is **the** primary consideration in all actions concerning children; which is in contrast to the corresponding provision of the CRC, which states that in all actions concerning children the best interests shall be **a** primary consideration (see p. 34). This gives the ACRWC's provision a wider scope than the CRC as it ensures that all its provisions are interpreted first and foremost in the child's best interest¹¹¹. In comparison to the ACRWC's strong wording, the opinion of the CRC Committee that the words "shall be place a strong legal obligation on States and mean that States may not exercise discretion as to whether children's best interest are to be assessed and ascribed the proper weight as a primary consideration in any action undertaken"¹¹², seems relatively ridiculous.

Despite some observations that the supremacy of the best interests principle in the

¹⁰⁹ CRC/C/GC/14, 29 May 2013, para 41 - 43.

¹¹⁰ Art 4 ACRWC: 1. *In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.*

¹¹¹ Lloyd, 2008, p.37.

¹¹² CRC/C/GC/14, 29 May 2013, para 36.

ACRWC tends to reflect Western culture rather than African spirit, it must be noted that the best interests of the child have been the paramount consideration in determining a variety of children's issues, such as custody, in both customary law and formal civil law in Africa, dating back to the late eighteenth century and has been applied consistently since¹¹³.

The **Right to Life, Survival and Development** of the child is the most fundamental of all human rights, without which all other rights of the Convention would become meaningless. The provision contained in the CRC¹¹⁴ goes beyond the protection of the mere survival of the child, but the obligation of States Parties to ensure the development of the child in addition to his or her life and survival illustrates that the right to life has to be interpreted in a comprehensive manner¹¹⁵ and encompasses obligations to actively ensure survival of all children and their protection against homicide, infanticide, suicide preventable child and infant mortality, harmful traditional practices, such as honour killings and female genital mutilation, violence, exploitation, child labour, trafficking, child prostitution and child pornography¹¹⁶.

On a more general level, the right to life, like other human rights, contains certain obligations of States, namely the obligations to respect, protect and fulfil.

The obligation to respect the right to life entails that the State organs must refrain from killing human beings or attacking their lives. Typical examples of violations are summary and extrajudicial executions, enforced disappearances leading to the death or supposed

¹¹³ Lloyd, 2008, p. 37.

¹¹⁴ The Right to Life is also contained in most general human rights instruments, such as Articles 3 UDHR, 6 ICCPR, 2 ECHR, 4 ACHR, 4 AfCHPR or 5 ArCHR. The most prominent provisions on the Right to Development are Art 22 of the ACHPR and the United Nations Declaration on the Right to Development.

¹¹⁵ Nowak, 2005, para 4.

¹¹⁶ Nowak, 2005, para 5.

death of the victims, and judicial executions as a result of unfair trials¹¹⁷. The obligation to protect means that States must take appropriate action to protect human beings under their jurisdiction against killings and attacks on their life by other non – State actors, such as criminals, terrorists or rebel fighters, i.e. States must take the necessary legislative measures and ensure that murder, homicide, manslaughter and other life – endangering crimes are offences under domestic criminal law with proper penalties in order to deter such crimes¹¹⁸. Lastly, states have an obligation to analyse the main causes of death in their countries and to develop strategies to reduce these risks. Useful indicators in this regard are life expectancy, infant and child mortality rates, maternal mortality rates, suicide rates, car accident rates with lethal consequences, fatal accidents at the work place, deaths in custody and prisons, deaths caused by human – made disasters, including nuclear accidents, the prevalence of HIV/AIDS, malaria, hepatitis, tuberculosis and other preventable diseases¹¹⁹.

In the context of children’s survival the most important indicator is the child (under 5) mortality rate, i.e. the probability of dying between birth and exactly five years of age expressed per 1,000 live births¹²⁰. In UNICEF’s State of the World’s Children Report 2012, the under 5 mortality ranking of 193 States revealed vast differences between rich and poor countries, as following examples illustrate: San Marino (2), Austria (4), industrialized countries (6), developing countries (63), least developed countries (110), Sub – Saharan Africa (121), Somalia (180)¹²¹. While certain deaths of children are unavoidable, the great majority of child deaths and suffering are the result of preventable causes, above all poverty, armed conflicts, preventable diseases, such as pneumonia and diarrhoeal diseases, malnu-

¹¹⁷ Nowak, 2012, p. 311.

¹¹⁸ Nowak, 2012, p. 312.

¹¹⁹ Nowak, 2012, p. 313.

¹²⁰ Nowak, 2005, para 3.

¹²¹ UNICEF, 2012, p. 87 – 91. For a global map including location based data and trends, visit: <http://www.childmortality.org/index.php?r=site/map>.

trition, lack of access to clean water, poor hygienic conditions and insufficient health and education services¹²². The causes for these deaths are human – made and could be prevented if Governments would finally take all the sufficient action, such as vaccination programmes, awareness – raising campaigns, improvement of basic health services etc., to protect children. In this regard, the right to life overlaps to a certain degree with the right to health (Art 24 CRC), the right to an adequate standard of living (Art 27) and other economic, social and cultural rights, which is underlined by the wording of Art 6 CRC, when it relates the inherent right to life of every child to the obligation of States to “ensure to the maximum extent possible the survival and development of the child”¹²³.

Development, as defined in the 1986 UN Declaration on the Right to Development, is understood as a comprehensive process aimed at the full realization of all civil, political, economic, social and cultural rights and fundamental freedoms of the human being. The human right to development also implies the full realization of the right of peoples to self – determination¹²⁴. The obligation of States Parties to the CRC to ensure to the maximum extent possible” the survival and development of the child, therefore, means that States shall create an environment which enables all children under their respective jurisdiction to grow up in a healthy and protected manner, free from fear and want, and to develop their personality, talents and mental and physical abilities to their fullest potential consistent with their evolving capacities. In addition, States also have an obligation to provide international co-operation and assistance for the healthy development of children in other countries and regions¹²⁵. The contents of the development of the child in Art 6

¹²² Nowak, 2012, p. 313.

¹²³ Idem.

¹²⁴ Art 1 UN Declaration on the Right to Development defines it as an “inalienable human right by virtue of which every human being and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” http://www.un.org/ga/search/view_doc.asp?symbol=a/res/41/128, accessed on 02 July 2014.

¹²⁵ Nowak, 2005, para 4.

CRC are further defined in Articles 5, 18, 20, 23(3), 24, 27, 28, 29, 31 and 39 of the CRC. According to Art 18 CRC both parents have common responsibilities for the upbringing and development of the child, and States shall render appropriate assistance to parents in this respect and shall respect the rights and responsibilities of parents to provide, in a manner consistent with the evolving capacities of the child (the need for adults to constantly adapt educational measures to that dynamical development of the child's personality) appropriate direction and guidance¹²⁶.

To fully grasp the scope and concept of the right to life of children it must be interpreted taking into account all other human rights guaranteed by the CRC, particularly the rights to:

- health (Art 24),
- education (Art 28 and 29),
- an adequate standard of living, including nutrition, water, clothing and housing (Art 27),
- social security (Art 26) and
- rest, leisure and play (Art 31).

As well as:

- the prohibition of the death penalty (Art 37[a]),
- the protection of children in armed conflicts (Art 38) and
- their non – recruitment into the armed forces (2nd OP to the CRC).

In the context of the ACRWC, the principle of life, survival and development ensures that children have the capacity to ascertain their rights and ensure the protection of their wel-

¹²⁶ Nowak, 2005, para 11.

fare. Without the other provisions of the ACRWC being read in compliance with the child's right to life, survival and development, a child will always remain vulnerable and incapacitated. Again, this underpinning principle refers to overarching concepts, such as poverty, disease, war and conflict, capital punishment and the disintegration of the traditional family unit¹²⁷. According to Lloyd the principle of survival incorporates the inherent right to life, which would require the eradication of the death penalty, especially considering at least 32 of 53 African states retain the death penalty. Thus its eradication would be imperative for the protection of children's rights in Africa¹²⁸. The general prohibition to impose the death penalty for crimes committed by children is contained in Art 6(5) of the CCPR and Art 4(5) of the ACHR. Art 5(3) of the ACRWC stipulates this prohibition in the context of the right to life, whereas Art 37(a) of the CRC regulates the prohibition of capital punishment in the context of the rights to personal liberty and security¹²⁹. Art 37(a) also prohibits torture and life imprisonment. Additionally, the CRC contains a number of specific State obligations to protect children against various forms of violence and exploitation which endanger the survival and healthy development of the child¹³⁰. These provisions shall be discussed within the sub – chapter on the Right to Protection¹³¹.

The children's **Right to be Heard** addresses the legal and social status of children, who lack the full autonomy of adults, but are subjects of rights at the same time. Art 12 CRC assures to every child capable the right to express her or his views freely in all matters affecting the child without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied

¹²⁷ Lloyd, 2008, p. 37.

¹²⁸ Idem.

¹²⁹ Nowak, 2005, para 8.

¹³⁰ Most importantly: Articles 19, 32, 33, 34, 35, 36.

¹³¹ p.56.

children, asylum – seeking and refugee children, and victims of armed conflict and other emergencies. These views are being given due weight in accordance with age and maturity, i.e. if the child is capable of forming her or his own views in a reasonable and independent manner.¹³² The conditions of age and maturity ought to be assessed when an individual child is heard, but also when a group of children chooses to express their views. Even when encountering difficulties in this assessment, State Parties should not use these obstacles to deny children their right to be heard and should provide an environment that enables the child to exercise her or his right to be heard¹³³. It is one of the fundamental values of the Convention and needs to be considered in the interpretation and implementation of all other rights¹³⁴. The Committee highlights the comprehensive nature of this obligation, as there is no minimum age for participation in the Convention, and it is not limited to certain areas of decision making. The Committee refers to settings relevant for practicing that right ranging from families to the school environment to the workplace, from informed consent to medical treatment to adequate involvement of children in criminal court proceedings or in administrative asylum procedures¹³⁵.

The right to be heard is different and goes further than the right to freedom of speech, because the CRC not only requires non – interference or to merely listen to children, but to actively give “due weight” to their views, i.e. there must be at least an opportunity for young people to have an impact on decisions. In order to understand what is actually in the best interest of a child, a first step should always be to try to identify the child’s own opinion on an issue for discussion¹³⁶.

¹³² CRC/C/GC/12, 20 July 2009, para 1, 32 and 44.

¹³³ CRC/C/GC/12, 20 July 2009, para 10 – 11.

¹³⁴ CRC/C/GC/12, 20 July 2009, para 2.

¹³⁵ Sax, 2012, p. 427.

¹³⁶ Idem.

Recently, the right to be heard has been broadly conceptualised as “participation”, a term used to describe 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 processes¹³⁷. The concept of participation emphasises that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children’s lives¹³⁸.

Art 7 ACRWC does not differ greatly from the CRC, as it also stresses the need for participation in order to effectively realise the substantive provisions contained in the ACRWC, but its intention is to afford African children additional protection in light of their particular vulnerability¹³⁹. Also, according to Lloyd, participation ensures that children are engaged actors rather than passive beneficiaries in the fulfilment of their rights and that they are capable of accessing their rights and have a voice, as well as a stake, in the protection of their rights and welfare¹⁴⁰.

A most recent example for such a process is the “*Forces of Change*” initiative by UNICEF in partnership with the Canadian government, Kenyan Ministry of Education and Kenyan Primary Schools Head Teachers Association, who hosted 400 elected student representatives (ages 9 to 14) from around the country to come together and elect their first national children’s government, giving them a strong voice to highlight their needs. Each child expressed their vision for how they, as leaders in their communities and schools, can be forces of change for all children in Kenya. Through a child – centred design

¹³⁷ CRC/C/GC/12, 20 July 2009, para 3.

¹³⁸ CRC/C/GC/12, 20 July 2009, para 13.

¹³⁹ Ehlers & Frank, 2008, p. 113.

¹⁴⁰ Lloyd, 2008, p. 38.

workshop, each child redefined the concept of child – friendly schools by providing actionable steps to making schools more inclusive, protective, healthy and equitable for all. After discussing all the collected ideas, these 400 children voted for their top 10 children’s government priorities in delivering quality education. Finally, the children’s elected Speaker of Parliament presented these top ten priorities to the Kenyan Cabinet Secretary of Education, who, in response, committed to translating the children’s government priorities into a more child-centred set of education policies¹⁴¹.

Substantive Provisions

As it has been sufficiently mentioned, both, the CRC and ACRWC, cover the full spectrum of civil, political, social, cultural and economic rights. These are all, obviously, equally important, but in the context of urbanisation and challenges faced specifically by children living in slums, some rights are infringed more frequently, which is why this part of the thesis considers in particular the *children’s rights to health, water, sanitation and hygiene, an adequate standard of living, education and protection*. In order to fully grasp the contents of each substantive provision the above mentioned general principles must always be kept in mind.

Before going into the depth of the CRC’s and ACRWC’s relevant substantive provisions one should take a look Art 7 CRC and Art 6 ACRWC¹⁴². These provisions entail **the right of the child to be registered** immediately after birth and the right to a name and nationality. While it might not be clear to everyone, the fulfilment of this particular right is crucial for children to enjoy all other rights guaranteed in the conventions. Apart from being the first legal acknowledgement of a child’s existence, birth registration is central to ensuring that

¹⁴¹ UNICEF ESARO Initiative “Forces Of Change”, <http://unicefstories.org/2014/06/16/primary-school-children-in-kenya-become-forces-for-change/>, accessed on 05 July 2014.

¹⁴² It is also enshrined for example in Art 15 UDHR, Art 1 and 5 CERD, Art 20 (2) ACHR) or Art 24(2) ICCPR.

children are accounted for and have access to basic services such as health, social security and education¹⁴³. The UN Human Rights Committee has also emphasised that the duty to register a child is closely linked with the right of a child to special measures of protection and promotes recognition of the child's legal personality¹⁴⁴. If a child is not registered he or she might be prevented from benefits and protection provided by the State. The State therefore has the obligation to establish a legal framework that allows for the registration of a child and has to ensure that children are registered in reality in order to provide for their security and guarantee the enjoyment of their rights¹⁴⁵.

Knowing the age of a child is central to protecting him or her from child labour, being arrested and treated as adults in the justice system, forcible conscription in armed forces, child marriage, trafficking and sexual exploitation. Furthermore, a birth certificate can support the traceability of unaccompanied and separated children and promote safe migration¹⁴⁶.

According to Art 6 CRC States parties are obliged to "ensure to the maximum extent possible the survival and development of the child". The fulfilment of this right implies the entitlement to the "enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health". This **Right to Health** is enshrined in Art 24 of the CRC and Art 14 of the ACRWC ("Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health")¹⁴⁷. The preamble of the constitution of the World Health Organisation, the key authority in international health

¹⁴³ UNICEF, <http://www.unicef.org/protection/>, accessed on 08 July 2014.

¹⁴⁴ UN Doc. HRI/GEN/1/Rev.5, 07 April 1989, para 7.

¹⁴⁵ Ziemele, 2007, p 9.

¹⁴⁶ UNICEF, <http://www.unicef.org/protection/>, accessed on 08 July 2014.

¹⁴⁷ The Right to Health is also enshrined in numerous other international and regional human rights instruments, such as Art 25 UDHR, Articles 13 and 7(b) CESC, Art 5 (e)(iv) CERD, Art 12 CEDAW, Art 16 AfCHPR, Art 39 ArCHR and Articles 3,11 and 13 of the European Social Charter.

care, defines health as “a state of complete physical, mental and social well – being and not merely the absence of disease or infirmity”¹⁴⁸: the right to health has to be seen as an inclusive right, embracing a wide range of factors influencing the state of one’s health. The right to health is to be understood as the right to control one’s health and body, including sexual and reproductive freedom, and the right to non – discriminatory access to adequate health care¹⁴⁹.

With regard to children States parties’ obligations specifically include

- measures to diminish infant and child mortality,
- measures to combat disease and malnutrition and the provision of adequate nutritious food and clean drinking water
- child care,
- antenatal, postnatal and preventive care,
- guidance for parents and family planning,
- education on child health, nutrition, hygiene, environmental sanitation, accident prevention and the advantages of breastfeeding¹⁵⁰.

The CRC Committee interprets the right to health as an inclusive right, indispensable for the enjoyment of all the other rights in the Convention, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of

¹⁴⁸ WHO, Constitution, <http://www.who.int/governance/eb/constitution/en/> accessed on 05 July 2014.

¹⁴⁹ Wenzel et al, 2012, p. 324.

¹⁵⁰ Art 24 (2) CRC and UNICEF, 2012, pp. 16 – 17.

programmes that address the underlying determinants of health¹⁵¹. Children's Health is affected by a variety of factors, which have changed during the past 20 years, including the attention given to new health problems and changing health priorities, such as: HIV/AIDS, pandemic influenza, non – communicable diseases, importance of mental health care, care of the new born, and neonatal and adolescent mortality, increased understanding of the factors that contribute to death, disease and disability in children, including structural determinants, such as the global economic and financial situation, poverty, unemployment, migration and population displacements, war and civil unrest, discrimination and marginalization. The Committee also acknowledges the growing understanding of the impact of rapid urbanisation on children's health¹⁵² (this impact will be explained in more detail in Chapter III: Urbanisation of this thesis).

For the effective fulfilment of the right to health for all children, States parties have an obligation to ensure that children's health is not undermined as a result of discrimination, as it is a significant factor contributing to vulnerability, especially considering gender – based discrimination as being particularly pervasive and affecting a wide range of outcomes, such as female infanticide/foeticide to discriminatory infant and young child feeding practices, gender stereotyping and access to services¹⁵³. The right to health is also closely connected to other rights, such as the right to life, the right of the child to be heard and the principle of the best interest of the child, which must be observed in all health related decisions concerning individual children or children as a group. The best interests should be based on the children's physical, emotional, social and educational needs, age, sex, relationship with parents and caregivers, and their family and social background, according to the Committee¹⁵⁴.

¹⁵¹ CRC/C/GC/15, 17 April 2013, para 2.

¹⁵² CRC/C/GC/15, 17 April 2013, para 5.

¹⁵³ CRC/C/GC/15, 17 April 2013, para 8 – 9.

¹⁵⁴ CRC/C/GC/15, 17 April 2013, para 12 and CRC/GC/2003/4, 1 July 2003, para 8 and 39, where the

In order to comply with their obligations with regard to the right to health, State parties have the obligation to make health care facilities available, accessible and acceptable. Availability in this context means that health care facilities, services, programmes and goods must be available in sufficient quantity and quality, including not only hospitals and other health – related facilities and drugs, but also the underlying determinants of health, such as safe drinking water, as well as immunisation programmes and trained professional personnel. Accessibility refers to the above mentioned right to non – discrimination, i.e. these facilities must be affordable and accessible to everybody without discrimination. Lastly, in terms of acceptability, all relevant services and goods must be not only respectful of medical ethics but also gender – sensitive and culturally appropriate, i.e. in respect of culture, beliefs and traditions of people, minorities and communities¹⁵⁵.

Similar to other provisions¹⁵⁶, the Committee also emphasises the need to respond to and understand children’s evolving capacities and the different health priorities along the life cycle influencing the planning, implementation and monitoring of appropriate policies and interventions that help provide relevant health services for all children¹⁵⁷.

The ACRWC prescribes the integration of basic health service programmes into national development plans, emphasising that parents, children, community leaders and community workers have the right to be supported and informed about the basic knowledge of child health and nutrition. It further highlights a collegial approach by providing for the meaningful participation of the whole of society and NGOs in the planning and management of a basic health service programme for children. Additionally,

Committee underlines the best interest of the child to have access to appropriate information on health issues.

¹⁵⁵ Wenzel et al, 2012, pp. 324 – 325.

¹⁵⁶ See, for example, above in context of the Right to Development.

¹⁵⁷ CRC/C/GC/15, 17 April 2013, para 20 – 22.

it provides for technical and financial support for the mobilisation of local community resources in the development of primary health care for children¹⁵⁸. Also, the AU has called on states to protect the health of children and emphasises that there can be no socioeconomic development on the continent without the protection, accessibility and availability of sound health facilities and raises awareness of the very high infant mortality rate, malnutrition, pre – mature death, chronic health problems and inability to work during active years of life, while stressing the need to improve primary health – care facilities and to establish immunisation programmes for children. With regard to the impact of HIV/AIDS on children and their rights, the AU has stressed prevention as the key issue and called on states to create national policy frameworks and the consideration of implementing sex education programmes with special emphasis on AIDS in the curricula of pre – teen schools as an essential part of the AIDS Prevention Education programme¹⁵⁹.

Art 24 CRC and Art 14 ACRWC also extend to providing **safe and clean drinking water** and eliminating the dangers of environmental pollution. Safe and clean drinking water and sanitation are essential and an integral component for the full enjoyment of life and all other human rights¹⁶⁰. According to the CRC Committee, government departments and local authorities responsible for water and sanitation should recognise their obligations to help realise children’s right to health, and actively consider child indicators on malnutrition, diarrhoea and other water – related diseases and household size when planning and carrying out infrastructure expansion and the maintenance of water services, even when they have privatised water and sanitation¹⁶¹. Without sufficient access to safe drinking water and an adequate water supply for basic hygiene, children’s health suffers¹⁶².

¹⁵⁸ Lloyd, 2008, p. 39.

¹⁵⁹ Murray, 2004, pp 175 – 176.

¹⁶⁰ A/RES/64/292, 28 July 2010, p 2.

¹⁶¹ CRC/C/GC/15, 17 April 2012, para 48.

¹⁶² UNICEF, 2012, p. 25.

Connected to the Right to Health is the **Right to an Adequate Standard of Living**. Considering that globally roughly 1.22 billion human beings live in conditions of poverty, i.e. they have to survive on less than \$ 1.25 per day¹⁶³, and lack basic shelter, food and housing, the Right to an Adequate Standard of Living can also be considered as one of the most important human rights. This right includes the right to live above the poverty line and encompasses several rights and standards that define what living in dignity means, such as the right to clothing and housing¹⁶⁴. It is enshrined in Articles 24 and 27 CRC, but not explicitly in the ACRWC¹⁶⁵. Living in poverty is especially harmful for children as it is destructive to their mental, physical, emotional and spiritual development.

The essential features are:

- The right to adequate food, which ought to be understood as the right to feed oneself and enjoy physical and economic access to food,
- the right to adequate housing, which includes the right to live in security, peace and dignity with at least a roof over one's head and also the right to legal security and safety of tenure, i.e. the protection of forced evictions and
- the right to adequate clothing¹⁶⁶.

Another essential means to realise the full and effective exercise of virtually all other human rights is the **Right to Education** as enshrined in Articles 28 and 29 CRC and Art 11 ACRWC¹⁶⁷. Worldwide about 67 million children of primary school age do not attend

¹⁶³ World Bank, <http://www.worldbank.org/en/topic/poverty/overview> accessed on 07 July 2014

¹⁶⁴ Lukas, 2012, p 317

¹⁶⁵ It is included in other international and regional documents, such as Art 11 ICESCR, Art 4(1) ESC, Art 14 CEDAW, Art 28 CRPD and Art 25 UDHR.

¹⁶⁶ Lukas, 2012, p 318

¹⁶⁷ It is also included in most international and regional human rights treaties, such as Articles 13 and 14 CESC, Art 10 CEDAW, Art 5 CERD, Art 30 MWC, Art 24 CPRD, Art 2 UDHR, Protocol No 1 ECHR, Art 17 ESC,

school and almost 800 million people, of whom two – thirds are women, still lack basic literacy skills. Education provides people the possibility to break the cycle of poverty and obtain the means to participate fully in their communities, to strengthen cultural identity, to control the State's actions, to exercise freedom of expression and access information more meaningfully and effectively¹⁶⁸. In its General Comment No 13 the ESCR Committee further elaborates that education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth¹⁶⁹.

The CRC itself does not offer a definition of the term education, but the term is usually used in double sense as the provision of basic skills on the one hand and the development of the intellectual, spiritual and emotional potential of the young person on the other hand¹⁷⁰. According to the CRC Committee, basic skills not only include literacy and numeracy but also life skills such as the ability to make well – balanced decisions; to resolve conflicts in a non – violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life¹⁷¹.

Art 28 CRC provides for education as a basic right, and for free and compulsory primary education as a matter of urgent priority. States parties to the CRC must take immediate steps in order to make primary education cost – free for every child and not just low – income children, meaning not only that access to education is free of charge, but also that

Art 49 Charter of the OAS, Art 13 Additional Protocol to the ACHR and in Art 17 AfCHPR.

¹⁶⁸ Ferenci, 2012, p 328.

¹⁶⁹ E/C.12/1999/10, 8 December 1999, para 1.

¹⁷⁰ Verheyde, 2006, p 11.

¹⁷¹ CRC/GC/2001/1, 17 April 2001, para 9.

all other direct and indirect costs, i.e. compulsory levies on parents/guardians or the obligation to wear expensive school uniforms should be eliminated¹⁷². The principle of compulsory education is a means of protecting children and their rights as it manifests the idea that the child's right to receive education should not suffer due to for instance parental neglect, abuse or ignorance, cultural resistance or child labour¹⁷³.

The CRC encourages the development of different forms of secondary education, including general and vocational education, stating that they should be available and accessible to all children. Here the obligation to introduce cost – free secondary education is much more cautiously formulated than regarding primary education, as States parties ought to develop different forms of secondary education by taking “appropriate measures such as the introduction free education and offering financial assistance in case of need.”¹⁷⁴

Higher education is to be accessible to all on the basis of capacity. Measures to encourage school attendance and reduce dropout rates are also envisaged. Furthermore, Art 29 CRC calls on governments to ensure that education leads to the fullest possible development of each child's ability and to respect for child's parents, cultural identity and for human rights¹⁷⁵. The CRC explicitly enshrines the principle that school discipline should be administered in a manner consistent with the child's human dignity and in conformity with the international rights of the child¹⁷⁶, i.e. teachers should be educated and trained to discipline their pupils without the use of any form of violence, be it mental or physical.

In summary, the core obligations of States in respect of the right to education are

¹⁷² Verheyde, 2006, pp 19 – 20.

¹⁷³ Verheyde, 2006, p 23.

¹⁷⁴ Verheyde, 2006, p 21.

¹⁷⁵ Mwambene, 2008, p 221.

¹⁷⁶ Verheyde, 2006, p 9.

- the provision of free and compulsory primary/basic education;
- the progressive introduction of free secondary, higher and fundamental education;
- the access to public educational institutions and programmes on a non – discriminatory basis;
- to guarantee an educational quality that conforms to the internationally recognised objectives;
- to guarantee parental choice in the education of their children without interference from the State or third parties, but in conformity with “minimum educational standards”¹⁷⁷.

According to the ESCR Committee the right to education encompasses four essential features:

1. Availability, i.e. states are obliged to have a sufficient quantity of functioning and functional (as in including the developmental and cultural contexts and having teaching material, training of teachers etc.) educational institutions and programmes available for primary school – aged children every year.
2. Accessibility, i.e. educational institutions must be accessible to everyone on the basis of equality and non – discrimination, including physical and economic accessibility. Primary education is to be free of charge, secondary and higher education have to be made progressively free by States.
3. Acceptability, i.e. children have the right to be educated in conformity with their religious or other beliefs and parents may establish, maintain, manage and control private educational establishments, as long as they meet education standards set by the State.
4. Adaptability, i.e. States are obliged to ensure that education remains flexible so it

¹⁷⁷ Ferenci, 2012, pp 328 – 329.

can adapt to the needs of changing societies and communities and respond the needs of students within their diverse social cultural settings^{178, 179}.

General Comment No 1 of the CRC Committee elaborates further on the aims of the right to education as provided in Art 29 CRC. These aims are to promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. These aims are all linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. Art 29 also insists on the need for education to be child – centred, child – friendly and empowering. Education ought to empower the child and equip children with life skills, which help to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture coined by human rights values.^{180,181}

The right to education as manifested by the ACRWC seems to have been taken a little further and more specific than the CRC's provision as it specifically mentions that education shall be also directed to the, e.g., "... preservation and strengthening of positive African morals, traditional values and cultures; the preparation of the child for a responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples and ethnic, tribal and religious groups; the preservation of national independence and territorial integrity...". The ACRWC also emphasises the principle of non – discrimination, as it elaborates that State parties "shall take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community [...] and ensure that children

¹⁷⁸ E/C.12/1999/10, 8 December 1999, para 6.

¹⁷⁹ Ferenci, 2012, p 329.

¹⁸⁰ Mwambene, 2008, p 221.

¹⁸¹ CRC/GC/2001/1, 17 April 2001, para 1 – 2.

who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.” Considering the fact that the right to education is a major tool in combating gender inequality, the ACRWC seems to offer stronger protection, at least on the first glance, for the girl child than the CRC. However, as it has been mentioned previously, the right to education must be read in connection with the four overarching principles of the CRC, in particular with the principle of non – discrimination, which prohibits distinctions in education for reasons such as 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, emphasising the need to combat inequality in education. Additionally, the UNESCO Convention against Discrimination in Education¹⁸² defines discrimination in education as any distinction, exclusion, limitation or preference on prohibited grounds, that has the purpose or effect of nullifying or impairing equality of treatment in education. Interpreting and applying the CRC’s provision in the sense of the CRC Committee’s opinion in combination with the UNESCO Convention offers an equally strong, even if somewhat indirect, level of protection of the girl child’s right to education as the ACRWC.

The **Right to Protection** is a manifold umbrella term referring to a combination of various provisions¹⁸³ guaranteeing all children the protection from abuse, exploitation and violence. According to the Child Protection Working Group, the definition of child protection is “the prevention of and response to abuse, neglect, exploitation and violence against children” and refers to a subset of rights¹⁸⁴:

¹⁸² UNESCO Convention, 29 May 1962, No. 6193.

¹⁸³ Protection is not only guaranteed through the CRC and ACRWC but also in Articles 3, 7 and 24 ICCPR, Art 10 ICESCR, Art 4 CERD, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

¹⁸⁴ CPWG, 2012, p 13.

- Art 19 CRC: the right of the child to freedom from all forms of violence
- Art 24 CRC: the right of the child to be protected from harmful traditional practices
- Art 32 CRC: the right of the child to be protected from economic exploitation
- Art 34 CRC: the right of the child to be protected from sexual exploitation and abuse
- Art 36 CRC: the right of the child to be protected against all other forms of exploitation
- Art 37 CRC: the right of the child to be protected against cruel, inhuman or degrading treatment or punishment
- Art 15 ACRWC: the right of the child to be protected from all forms of economic exploitation
- Art 16 ACRWC: the right of the child to be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury, abuse, neglect or maltreatment including sexual abuse.
- Art 21 ACRWC: the right to be protected from harmful traditional practices

According to the CRC Committee in its General Comment No 13, Violence is defined and to be understood as all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, mal – treatment or exploitation, including sexual abuse¹⁸⁵, in order to emphasise that the term violence in the General Comment is more than “just” physical harm and encompasses non – physical and/or non – intentional forms of violence, such as, inter alia, neglect and psychological mal treatment.¹⁸⁶ The above mentioned articles place an obligation on States Parties to take legislative, administrative, social and educational steps to ensure that no level of violence is tolerated and that children are protected from all forms of violence. The provisions also require States Parties to undertake protective

¹⁸⁵ For definitions of these different types of violence mentioned, please consult the glossary on pages 5 – 9.

¹⁸⁶ CRC/C/GC/13, 18 April 2011, para 4

measures, i.e. the establishment of social programmes or special monitoring units to provide necessary support for the child and his or her parents or legal guardians and to provide other forms of prevention and engage in identification, reporting, referral investigation, treatment and follow – up of reported incidences¹⁸⁷.

The Committee further stresses the need to a holistic child rights approach in States Parties' obligations, supporting the strengths and resources of the child him/herself and all social systems of which the child is a part, i.e. family, school, community, institutions, religious and cultural systems, and emphasises that respect for the dignity, life, survival, well – being, health, development, participation and non – discrimination of the child as a rights – bearing person must be established, which is best realised by respecting, protecting and fulfilling all of the rights in the CRC. Children must not be treated as objects in need of assistance, but as rights holders entitled to non – negotiable rights to protection¹⁸⁸.

The Committee notes that despite the numerous initiatives developed by governments and others, efforts and progress are in general insufficient and complains that legal frameworks in a majority of States still fail to prohibit all forms of violence against children, and where laws are in place, their enforcement is often inadequate. The impact of measures taken often lacks knowledge, data and understanding of violence against children and its root causes¹⁸⁹. These claims are supported by a UN Study on Violence against Children, which elaborates that violence against children takes a variety of forms and is influenced by a wide range of factors, however, much remains hidden. Children are often afraid to report incidences of violence against them, since the perpetrators are in many cases people, who they normally trust or should feel protected by, such as parents,

¹⁸⁷ Kassan, 2008, 168.

¹⁸⁸ CRC/C/GC/13, 18 April 2011, para 59.

¹⁸⁹ CRC/C/GC/13, 18 April 2011, para 12.

spouses, teachers or other family members. This fear is also often closely related to the stigma attached to reporting violence, particularly in places, where family “honour” is placed above the safety and well – being of children¹⁹⁰. It is the States parties’ obligation to eliminate the widespread prevalence and incidence of violence against children and to secure and promote children’s fundamental rights to ensure their dignity and physical and psychological integrity are safeguarded. A respectful and supportive environment is imperative for a child’s well – being and healthy development¹⁹¹.

States parties are obligated to “take all appropriate legislative, administrative, social and educational measures to protect children” (as mentioned in all Articles listed in the beginning of this part). According to the CRC Committee this means that an integrated, cohesive, interdisciplinary and coordinated system is required, which incorporates the full range of measures identified¹⁹².

Probably the most crucial part of the interventions regarding the right to protection is prevention. As the Committee puts it, “child protection must begin with proactive prevention of all forms of violence as wells as explicitly prohibit all forms of violence. States have the obligation to adopt all measures necessary to ensure that adults responsible for the care, guidance and upbringing of children will respect and protect children’s rights. Prevention includes public health and other measures to positively promote a respectful upbringing of children, free from violence, for all children, and to target the root causes of violence at the levels of the child, family, perpetrator, community, institution and society.”¹⁹³

¹⁹⁰ A/61/299, 29 August 2006, para 25.

¹⁹¹ CRC/C/GC/13, 18 April 2011, para 13 – 14.

¹⁹² CRC/C/GC/13, 18 April 2006, para 39.

¹⁹³ CRC/C/GC/13, 18 April 2006, para 46.

Within the context of the ACRWC, Lloyd refers to Africa's cultural practices, which are part of everyday life. Art 21 of the ACRWC protects children against harmful social and cultural practices and is of utmost importance in Africa, especially in light of the recognition of African cultural heritage and African civilisation. Many discriminatory and dangerous practices in Africa stem from custom and heritage and they have been difficult to eradicate. States must take all appropriate measures to ensure effective implementation of this provision. The ACRWC is very broad, as no specific practices or customs are expressly mentioned; leaving it open to interpretation and it includes practices such as female genital mutilation (FGM). Art 21 specifically relates to the African customary practice of child betrothal and marriage, and interrelates with other clauses in the treaty, such as Art 27 (Sexual Exploitation), Art 11 (Education), Art 3 (Discrimination), Art 5 (Survival and Development) and Art 14 (Health)¹⁹⁴, emphasising once more the interrelatedness of all the rights guaranteed.

The term protection also encompasses social protection, connecting it with other provisions of both Conventions. Of particular relevance in the urban context is the recognition of "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development"¹⁹⁵. The responsibility to secure these conditions lies mainly with parents and guardians, but States parties are obliged to provide material assistance and support programmes¹⁹⁶.

How child protection is dealt with in terms of standards and systems will be elaborated in the next sub – chapter.

¹⁹⁴ Lloyd, 2008, pp 39 – 40.

¹⁹⁵ Art 27 CRC; see above pp 49 – 50.

¹⁹⁶ UNICEF, 2012, p. 16.

Child Protection Systems

As it has already been mentioned, child protection entails the protection of children from all forms of violence or harm, the protection of their rights and social protection, i.e. acknowledging the importance of adequate and safe living conditions.

Violence, exploitation and abuse are often practiced by someone known to the child, including parents, other family members, caretakers, teachers, employers, law enforcement authorities, state and non – state actors and other children. Violence and abuse occurs in the homes, families, schools, care and justice systems, workplaces and communities across all contexts. Many incidences remain unreported for fear of stigma or further harm.

Vulnerability is associated with many different factors. Some girls and boys are particularly vulnerable because of gender, race, disabilities, ethnic origin or socio – economic status or because they are orphaned, indigenous, from ethnic minorities or other marginalised groups. Children living and working on the streets, living in institutions and detention or living in communities where inequality, unemployment and poverty are highly concentrated are also often at risk of being victims of abuse.

In order to prevent and respond to such vulnerabilities, UNICEF published its Child Protection Strategy¹⁹⁷ in 2008 defining the aims of child protection and the contribution of UNICEF to national and international efforts to fulfil children's rights to protection and to achieve the Millennium Development Goals (MDGs)¹⁹⁸.

¹⁹⁷ E/ICEF/2008/5/Rev.1, 20 May 2008

¹⁹⁸ The MDGs are eight international development goals, which all UN member states and several international organisations agreed upon and committed to help achieve by 2015. These are: 1. Eradicate extreme poverty and hunger; 2. Achieve universal primary education; 3. Promote gender equality and empower women; 4. Reduce child mortality; 5. Improve maternal health; 6. Combat HIV/AIDS, malaria and

All children have the right to be protected from harm and all activities ought to be guided by the existing international normative framework for the rights of the child, as well as decisions and policies agreed upon in the UN intergovernmental bodies. It is essential to prevent and respond to violence, exploitation and abuse to ensure children's rights to survival, development and well – being. The overarching aim is to create a protective environment, where girls and boys are free from violence, exploitation and unnecessary separation from their families and where laws, services, behaviours and practices minimise children's vulnerability, address known risk factors and strengthen children's own resilience. UNICEF emphasises the idea that successful protection begins with prevention, giving priority to education, health and addressing gender discrimination. Strong child protection provides a network against the risks and vulnerabilities underlying many forms of harm and abuse, aiming at reducing children's exposure to said harm by fostering actions that strengthen the protective environment for children in all settings¹⁹⁹. UNICEF establishes five principal sections grouped by the main approaches for building a protective environment:

1. Strengthening national protection systems;
2. supporting social change;
3. promoting child protection in conflict and natural disasters;
4. evidence – building and knowledge management;
5. convening and catalysing agents of change.

other diseases; 7. Ensure environmental sustainability; 8. Develop a global partnership for development. (Wikipedia, available at http://en.wikipedia.org/wiki/Millennium_Development_Goals accessed on 22 July 2014)

¹⁹⁹ E/ICEF/2008/5/Rev.1, 20 May 2008, paras 1 - 6

Additionally eight broad elements are critical for good protection, which describe National Protection Systems and also Social Change:

1. Governmental commitment to fulfilling protection right;
2. legislation and enforcement;
3. attitudes, traditions, customs, behaviour and practices;
4. open discussion, including the engagement of media and civil society;
5. children's life skills, knowledge and participation;
6. capacity of those in contact with the child;
7. basic and targeted services;
8. monitoring and oversight.

National Protection Systems entail elements for which the State bears primary responsibility for action, such as government commitment, legislation, service provision, monitoring and building human capacity. Child Protection Systems in general comprise the set of laws, policies, regulations and services needed across all social sectors to support prevention and response to protection – related risks²⁰⁰.

The overall idea behind this strategic approach is clear: one cannot effectively tackle child protection issues without engaging the whole national and international support system, e.g. one cannot reduce the number of children living on the streets without also engaging with the problems at home or in school. Understanding the underlying causes is crucial to actually changing the children's situation. Child Protection Systems seek to address the full spectrum of risk factors in the lives of all children and their families. Responsibilities for child protection components are often spread across government agencies, with services

²⁰⁰ E/ICEF/2008/5/Rev.1, 20 May 2008, paras 8 - 12

delivered, by local authorities, non – governmental and community – based organisations. Apart from this rather formal approach to child protection there is also a more informal component of the system, which is of great importance, especially in more “traditional” countries and cultures: community – based child protection mechanisms. These mechanisms are at the forefront of efforts to address child protection in emergency, transitional, and development contexts worldwide and have become a common response in many settings, particularly in areas affected by armed conflict or displacement. According to Save the Children, they are a favoured approach in places where local and national government is unable or unwilling to fulfil children’s rights to care and protection²⁰¹.

The Kenyan legal and policy framework, for example, includes the CRC, the ACRWC as well as provisions in national legislation and in the 2010 Kenya Constitution, such as Art 53(1)d which provides protection from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous and exploitative labour. There are furthermore the Kenya Citizens and Foreign Nationals Management Service Act of 2011, providing a framework for the right to identity for all and the Counter Trafficking in Persons Act 2010, which provides for the prevention, suppression and punishment of trafficking in persons. In 2011 the Prohibition of Female Genital Mutilation Act was passed, which is also accompanied by a comprehensive National Policy for the Abandonment of FGM/C. The Department of Children Services (DCS) with UNICEF support developed National Standards on Best Practices in Charitable Children Institutions in 2011, whose aim is to promote de – institutionalisation of children, and to provide appropriate care and protection for those children who must be in the care of these institutions. The DCS furthermore developed Standards of Practices for Child Protection Centres in 2010.

²⁰¹ Save the Children, 2009, p. 1

However, according to UNICEF, despite these legal advancements Kenya still needs to adopt further additional legislation to fully protect children's rights in accordance with international standards. Under the leadership of the former Ministry of Gender, Children and Social Development, the national child protection community has worked towards a strengthened child protection system, which is comprehensive, sustainable, coordinated and recognises that children can face multiple and simultaneous protection risks that require coordinated prevention and response services²⁰².

The 2001 Children Act established several coordination mechanisms for child protection, such as the National Council for Children's Services, local Area Advisory Councils, a network of District Children's Officers and technical working groups. Coordination nevertheless remains a challenge in the Kenyan child protection system, as the Children's Act does not provide a clear definition of the roles and responsibilities of the ministries involved in child protection and the sometimes conflicting mandates impede the effective implementation of programmes, which, in the long run, harms children and is seriously hindering their protection. Children in Kenya are particularly at risk of being physically or mentally violated or abused, of living and working in the streets, of being victims of trafficking and hazardous child labour or harmful traditional practices.

Duties of Children

When reading the ACRWC one cannot help but notice Art 31, which ascertains that "every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community [...]". This provision reflects the African traditional concept of family and society, as it bestows responsibilities on children to, inter alia, work for the cohesion of the family, to respect parents, superiors and elders

²⁰² <http://www.savethechildren.org.uk/sites/default/files/docs/social-protection-Kenya-briefing-BT.pdf>.

at all times and assist in times of need, to serve the national community through physical and intellectual abilities, and to preserve and strengthen traditional values²⁰³. Including such a provision in the ACRWC, does make sense, as the Convention was partly established as a counterpart, but also as an extension to the CRC.

This article is of particular interest as there is no correspondent provision in the CRC. The “Western” concept considers human rights as being inherent natural rights deriving from the concept of human dignity. The idea of freedom is central to said human dignity and constitutes us as moral subjects, including the aspect of mutual responsibility demanding the recognition and respect of each human being as a subject entitled to his or her own freedom²⁰⁴. One person’s freedom and liberty end, where another person’s freedoms are touched upon. In the Western world a spelled out right therefore already implicitly includes an “obligation” or responsibility towards others, making a provision such as Art 31 ACRWC theoretically redundant.

In their guide on how to interact with the ACERWC, Save the Children and Plan International deal with the concern, that Art 31 might conflict with children’s rights to participation, freedom of expression, association and thought. In their opinion, however, the child’s duty towards his or her family and parents is closely linked to the duties of parents, and others who are responsible for the child, to raise that child to adulthood to the best of their abilities and capacities, emphasising therefore the reciprocal nature of the duties and responsibilities between parent and child in the family context, basically referring to the implicit idea of aforementioned freedom in human dignity. It is furthermore imperative to interpret all aspects of Art 31 in a way that the principle of the best interests of the child is respected at all times. It must also not be ignored, that the

²⁰³ Lloyd, 2008, p. 40.

²⁰⁴ Luf, 2012, p. 37.

relevant article limits itself by saying that it can only be exercised subject to the child's age and ability²⁰⁵.

To view the provision in this sense of reciprocity does seem logical at first, however, it does also seem to place a burden on children in terms of responsibilities towards their communities and societies, which contravenes the general idea of children's right being there to *protect* children unconditionally from arbitrary interferences and violations of their rights.

²⁰⁵ Save the Children and Plan International, 2010, p. 13

CHAPTER III: URBANISATION

For the first time in history, the majority of the world's population is living in cities with numbers continuing to grow. As has been already mentioned, by 2050 7 out of every 10 people will live in cities. This trend, **urbanisation**, is associated with a number of consequences such as overall shifts in the economy, away from agriculture – based activities and towards mass industry, technology and service. With the spread of globalisation, urbanisation has also become more rapid and has spread all over the world. Currently, half of all urban dwellers live in cities between 100.000 and 500.000 people and almost all urban population growth in the next 30 years is predicted to occur in cities of developing countries, where municipalities and other government authorities are often overwhelmed by the rapid population boom²⁰⁶.

Urban areas usually generate big portions of gross domestic product and create development opportunities, jobs and investment²⁰⁷. While cities are centres of economic activity bringing countries opportunity, prosperity and health, they are also filled with problems, as many of the urban poor live in slums or other informal settlements and are often excluded from estimates of cities' economic growth and health development. Cities offer unique opportunities for residents to benefit from with an especially huge potential for children as there is usually a better access to education, health and social services and stronger possibilities of political participation. However, health hazards, i.e. poor housing conditions, lack of access to safe water and sanitation, discrimination, violence and economic downturns cause a range of problems²⁰⁸, and harsh living conditions which are most visible for children.

²⁰⁶ WHO/UN – HABITAT, 2010, p. ix.

²⁰⁷ WHO/UN – HABITAT, 2010, p. 6.

²⁰⁸ WHO/UN – HABITAT, 2010, p. 2.

WHAT IS URBANISATION?

Urbanisation refers to the overall increase in the proportion of the population living in urban areas, as well as the process by which large numbers have become permanently concentrated in relatively small areas, forming cities. It has been characterized by demographic shifts from rural areas to cities; growth of urban populations; and overall shifts in the economy from farming towards industry, technology and service²⁰⁹. As globalisation spread industry and technology, urbanisation has become more rapid as well. It is expected that by the middle of the 21st century, the urban population will have almost doubled, while rural populations will have declined around the world. People will continue to live in cities of all sizes²¹⁰.

Additionally suburbanisation, or urban sprawl is increasingly prevalent around the world, characterised by a population that is widely dispersed in low – density development, separated residential and commercial areas, a network of roads marked by long blocks and poor access, and a lack of well – defined, thriving activity centres, such as downtown areas. These areas are usually heavily dependent on motorised transport in combination with a lack of transport alternatives, and pedestrian unfriendly - spaces²¹¹.

The way in which urbanisation is taking place varies regionally. Africa and Asia today are the least urbanised regions, with 40% and 42% of their population, respectively, living in urban areas, however, by 2050 their urban populations will increase to 62% in Africa and 65% in Asia. At the same time, in Europe more than half of all cities are expected to experience declines in population over the next two decades²¹².

²⁰⁹ WHO/UN – HABITAT, 2010, p. 4.

²¹⁰ Idem.

²¹¹ WHO/UN – HABITAT, 2010, p. 5.

²¹² Idem.

THE BENEFITS OF URBANISATION

As it has been repeatedly mentioned, cities in all parts of the world do offer great opportunities for residents to increase income, mobilise for political action and to benefit from education as well as health and social services. There is usually more efficient and environmentally sensitive housing, elaborate transport systems and other physical infrastructure²¹³.

We also usually link cities to economic development, as they are often situated in countries with higher incomes, more stable economies and stronger institutions, leading to better equipment to withstand the shocks and volatility of the global economy. Cities generate substantial portions of gross domestic product and national wealth, and create development opportunities, jobs and investment and they are predicted to have even stronger roles as engines of growth and national development²¹⁴. Experience indicates that urbanisation levels are closely related to levels of income and performance on human development indicators. Cities play a growing role in creating wealth, enhancing social development, attracting investment and harnessing both human and technical resources for achieving gains in productivity and competitiveness²¹⁵. Moreover, goods and services are generally produced more efficiently in densely populated areas that provide access to supportive services, transport and communication links, a pool of labour with appropriate skills and a critical mass of consumers. This concentration of economic activity makes cities the prime generators of non – agricultural employment in both the formal and informal sectors. Especially in developing regions, the informal sector employs a significant portion of the non – agricultural labour force. Cities also contribute to rural development in an environment with strong urban – rural linkages. Improved infrastructure between rural

²¹³ WHO/UN – HABITAT, 2010, p. 6.

²¹⁴ Idem.

²¹⁵ UN - HABITAT, 2006/2007, p. 48.

areas and cities increases rural productivity and enhances rural residents' access to education, healthcare, markets, credit, information and other services²¹⁶.

Urbanisation is not only positive in the sense of economic development, but also in terms of desirable social and health outcomes. Urban populations are generally better off than their rural counterparts, as they have greater access to social and health services, higher literacy rates and longer life expectancy²¹⁷. People of different religions and ethnic backgrounds often reside in the same area, leading to more understanding and acceptances.

Many cities around the world have prioritised their engagement to create healthier environments, e.g. healthy cities networks are being established in all WHO regions. These networks were established by the WHO in 1986 and include now thousands of cities, towns and regions. Each network develops its own approach based on local needs and concerns, but all have a common root in the concept of the city as a key setting for health promotion. The cities are seen as places where environments support health, where municipal, regional, and provincial and national governments develop and implement policies that are good for health and where citizens are engaged in the process of creating healthier neighbourhoods²¹⁸. With regards to Africa, the Healthy Cities initiative is still relatively young (it was introduced in 1999) and many projects aim to improve the living conditions and health of the urban poor. These projects typically address pressing community issues such as access to water and sanitation²¹⁹.

²¹⁶ UN - HABITAT, 2006/2007, p. 49.

²¹⁷ WHO/UN – HABITAT, 2010, p. 6.

²¹⁸ Idem.

²¹⁹ WHO/UN – HABITAT, 2010, p. 7.

THE CHALLENGES OF URBANISATION

Despite all these opportunities and benefits, many cities have also generated inequalities, exclusion and serious environmental problems, which all may lead to an impediment to the fulfilment of children's rights and their guaranteed protection as such rapid population growth can strain municipal capacities to regulate air and water quality, provide sanitation, ensure food availability, protect food safety and safeguard the quality of health care provided by both the public and private sectors. Consequences are often unhealthy and dangerous housing, problems with food and water safety, congested traffic, air pollution, crime and violence²²⁰. Difficult living conditions are often exacerbated by illegality, limited participation rights and possibilities, lack of secure tenure, assets and legal protection.

Growth often occurs so quickly that city planners are unaware of how many people are residing in their cities, where they are living and what they need. Such a lack of information creates situations where resources fail to reach those in need and contributes to urban poverty.²²¹ Many urban residents live close to schools or hospitals, however, physical proximity to a service does not guarantee access, as poor people often lack the sense of entitlement and empowerment to ask for services²²². Estimates show that about 828 million people live in slum conditions, representing around one third of the world's population, thus, slums are the dominant type of human settlement. The vast majority of slums are located in cities of developing countries. Slum dwellers very often experience harsh social and economic realities manifesting themselves in material, physical, social and political deprivation²²³. They frequently lack access to clean water, adequate sanitation, and sufficient living space and secure tenure.

²²⁰ WHO/UN – HABITAT, 2010, p. 7.

²²¹ Idem.

²²² UNICEF, 2012, pp. 3-4.

²²³ WHO/UN – HABITAT, 2010, pp. 7-8.

Children are generally in a more vulnerable position, which is intensified in such living conditions. Severe poverty²²⁴ and lack of access to basic necessities such as sufficient food and housing in the slums creates an especially negative climate for children's protection and well - being²²⁵. Urban areas frequently present multiple, interacting risks to children such as family separation, living and working on the streets, sexual exploitation and abuse, HIV/AIDS, violence, being out of school, trafficking, being in conflict with the law, child labour, neglect or substance abuse²²⁶. Children's rights are affected in a variety of ways and areas, which will be dealt with in accordance with the aforementioned correspondent children's rights.

Health

Children's health is not only determined by the medical care and support systems available to prevent and manage illness, but also by the socio – economic and political environment in which they are born, grow and live²²⁷. Almost 8 million children died in 2010 before reaching the age of five, with studies showing that children living in informal urban settlements are particularly vulnerable and suffering disproportionately from ill - health, as they are more likely to experience disease, injury and premature death²²⁸. Statistics show that there is a very high burden of disease among low – income urban dwellers, with children being disproportionately affected, due to their physiological vulnerability and urge to play wherever, even in hazardous conditions. Health risks mostly stem from inadequate sanitation, water and housing and minimal access to health care. Leading causes of under – five mortality include pneumonia, diarrhoea, malaria and HIV/AIDS – widespread conditions among most urban children living in informal settlements or slums. Risks of

²²⁴ According to UN – HABITAT the locust of poverty is moving to the cities, with more than 95% population growth occurring in urban areas (UN – HABITAT, 2006/2007, p. 54).

²²⁵ Kostelny K., et al. 2013, p. 20.

²²⁶ Kostelny K., et al. 2013, p. 27.

²²⁷ UNICEF, 2012, p. 4.

²²⁸ Sverdik, 2011, p.123 and 126.

diarrhoea can be mitigated by sufficient nutrition, access to good quality water and sanitation, which is all usually impaired and not available in slums. Children under the age of five experience more than 80 per cent of the global burden of diarrhoeal disease, which can promote malnutrition by loss of nutrients. Young people are also more prone to pneumonia, often proving fatal, as highlighted by data of two of Nairobi's informal settlements, where pneumonia was the single leading cause of premature mortality in young children. Pneumonia and other respiratory illnesses are mostly caused by inadequate, overcrowded shelter and indoor air pollution²²⁹.

Indoor air pollution highlights the links between poverty, health and housing, but also shows how health impacts are influenced by age and gender, as low – quality indoor air is often associated with overcrowding, inadequate ventilation and solid cooking fuels such as wood, crop residues, coal or charcoal. These solid fuels are widespread in low – income households, as they are relatively cheap to obtain, while wealthier families can afford sources such as kerosene, natural gas or electricity. Low – income women and children are usually more exposed to indoor air pollution, because children spend more time indoors with their families or are strapped to their mothers' backs while they cook, resulting in pneumonia, chronic obstructive lung disease, asthma and tuberculosis²³⁰.

Many deaths can and already have been averted by *immunisation*. According to UNICEF around 2.5 million under – five deaths are averted annually by immunisation against diphtheria, pertussis and tetanus and measles. Lower levels of general immunisation contribute to more frequent outbreaks of vaccine – preventable diseases especially in informal

²²⁹ Sverdik, 2011, pp 126 – 128.

²³⁰ Sverdik, 2011, p. 128.

settlements, which are already more vulnerable due to the high population density and other factors already mentioned²³¹.

Not only does the prevalence of diseases reinforce low – income children’s vulnerability, but also the fact that the costs of illnesses inflict a great burden on poor families. Direct expenditure on medication or hospitalisation is already burdensome, indirect costs of missed workdays is often even more unmanageable. Exhausted savings often leads to children having to work instead of attending school, magnifying already existing vulnerabilities²³². This is especially visible in terms of maternal and new-born health. More than 350,000 women died in pregnancy or childbirth in 2008, with most of them residing in sub – Saharan Africa and Asia and most deaths being caused by haemorrhage, high blood pressure, unsafe abortion or sepsis²³³. Research in Nairobi has shown that pregnant women in informal settlements lack access to emergency transport or affordable, adequate maternal care²³⁴. Health services in slums are often of much lower quality, forcing people to turn to unqualified health practitioners or pay excessive costs for delivery.

Child under - nutrition is another major health concern. It is thought to contribute to over a third of under – five deaths globally and it is one factor of the so – called “poverty syndrome”, which is characterised by low income, large family size, poor education and limited access to food, water, sanitation and maternal and child health services. A reliable measure of under – nutrition is stunting, as it indicates prolonged periods of inadequate food intake, calorie and/or protein deficiency or persistent or recurrent ill health. Children

²³¹ UNICEF, 2012, p. 17.

²³² Sverdik, 2011, p. 135 – 136.

²³³ UNICEF, 2012, p. 18.

²³⁴ Sverdik, 2011, p. 136.

are, per definitionem, stunted if their height – for – age index falls more than two standard deviations below the median of the reference population²³⁵.

The prevalence of HIV/AIDS is higher in urban than in rural areas. Slum residents often start sexual intercourse younger, have more sexual partners and are less likely to know of or adopt preventive measures against contracting HIV/AIDS. This contributes to the growing number of AIDS orphans, who often become street children caught in the poverty trap of hunger, malnutrition, disease and illiteracy²³⁶. Adolescent girls and young women are at a particular risk because of poverty, which drives many to commercial sex, and exposes them to a higher risk of sexual exploitation and forced sex²³⁷, reinforcing the vicious cycle of disease and poverty.

In addition to their physical well – being, children’s mental health must not be disregarded. The CRC and ACRWC not only guarantee children’s physical health, but the provisions also include the guarantee of the highest attainable standard of mental health. Children living in poverty experience high levels of depression and distress and show more behavioural and emotional problems. Such mental problems may affect growth and development, school performance, and peer and family relationships and may increase the risk of suicide. Additionally children and adolescents in cities have greater access to alcohol and illegal drugs than children living in rural areas and they often turn to these substances to cope with stress and frustration caused by unemployment²³⁸, disease or losing family members.

²³⁵ UNICEF, 2012, p. 20.

²³⁶ UN – HABITAT, 2006/2007, p. 55.

²³⁷ UNICEF, 2012, p. 24.

²³⁸ Idem.

It has now been sufficiently mentioned that millions of children die from diarrhoea. Unsafe water, poor sanitation and unhygienic conditions are the main factors contributing to the spread of diarrhoea and other communicable diseases, including for example cholera. Many people are forced to walk to collect water from other districts or have to buy it from private vendors. Without sufficient safe drinking water and enough water to maintain basic hygiene, children's health obviously suffers. Not only is there often not enough drinking water, but also sanitation coverage fails to keep up with urban population growth. In 2008, 169 million urban dwellers practised open defecation. These unsanitary conditions make urban slums high – risk areas for communicable diseases. People often have to share sanitation facilities, which are overcrowded and poorly maintained. These conditions are especially uncomfortable for girls, putting them at higher risk of sexual harassment or abuse²³⁹.

Education

Available data indicates that school enrolment is higher in cities than in villages and children in urban settings are generally considered to have an educational advantage, but in reality urban inequities undermine children's right to education²⁴⁰. The causes of social inequality in education are manifold and plenty: poverty, embedded costs of education, shortage of school facilities, unsafe school environment and social practices that discriminate against girls, including requirements that they provide domestic labour or marry and have families at a young age. Families in slum communities often cannot afford to send their children to school, due to combined costs of school fees, textbooks and uniforms. In Kenya, for example, the government mandated free primary education for all children in 2003, but students still have to purchase uniforms and supplies and pay fees to take exams, making it virtually impossible for their families to send them to school. Also, there

²³⁹ UNICEF, 2012, p. 25 – 26.

²⁴⁰ UNICEF, 2012, p. 28.

are often not enough public schools available. A study in Kibera, Nairobi of 2003 has shown that the 14 public schools within walking distance could only accommodate 20,000 of the more than 100,000 primary school – age children living in the area²⁴¹. Moreover, refugees and internally displaced children often live in informal settlements in urban areas, and schools that are already under strain may have great difficulty in accommodation an influx of displaced children²⁴².

Girls have always had less access to educational opportunities than boys in many countries and cultures, however, eliminating gender disparities in education is essential for promoting overall gender equality and empowering women. In many countries with low overall enrolment, fewer than fifty per cent of primary school aged girls are enrolled. Female illiteracy rates are still high in urban poor and rural areas, as many girls drop out of school too early, due to lack of finances, early marriage and pregnancy, domestic work responsibilities and poor performance, reinforcing already existing discrimination. Urban families often simply cannot afford to pay school fees or other embedded costs of schooling for all their children and daughters are typically the first casualties of such financial cut backs. Among many urban communities, it is common for families to choose to educate their sons, while girls remain with the parents to help with housework. In secondary school schools, a large number of girls discontinue their education because of early marriage and/or pregnancy. Sexual harassment and abuse also impacts the dropout rate, as parents are sometimes inclined to withdraw their daughters from school to prevent pregnancies or the contraction of HIV. Some girls also stop attending school to help their families with domestic chores, i.e. taking care of children or fetching water, while their parents struggle to earn an income for food, housing and other necessities. Studies show that going to school is often seen as an obstacle to the performance of household chores and

²⁴¹ UN – HABITAT, 2006/2007, pp. 122 – 123.

²⁴² UNICEF, 2012, p. 30.

parents perceive the cost of lost labour to be greater than the cost of keeping girls out of schools²⁴³.

Protection

Children living in informal urban settlements, particularly unaccompanied children and children with disabilities, are vulnerable to a wide range of protection risks including abandonment, all forms of violence, sexual abuse, and trafficking, hazardous labour and harmful substances. Children often lack safe spaces where they can play and learn, as they live in overcrowded settlements leading them to socialize in dangerous environments and engaging in harmful behaviours²⁴⁴. Children without parental care lack the protective environment that adult care should usually provide, but also children in very large families may lack parental attention and can become victims of neglect. Furthermore, due to socio – economic factors and cultural practices, girls are particularly vulnerable to violence, sexual abuse and harmful traditional practices, such as FGM or early marriages.

Estimates show that around 250 – 300.000 children live and work in the streets of Kenya²⁴⁵. Most of them come from rural areas, with socio – economic factors, poverty and lack of care in the family causing them to reside in the street, but the major pull – factor is the ability to make money²⁴⁶. On the street most children lack food, shelter and face harassment from the police and other security agents. Child prostitution is high among these children to seek money or food to sustain them.

²⁴³ UN – HABITAT, 123 – 126.

²⁴⁴ Save the Children, 2012, pp. 25 – 26.

²⁴⁵ Railway Children, http://www.railwaychildren.org.uk/our-solution/where-we-work/east-africa/#.U9gLd_I_t5I, accessed on 29 July 2014.

²⁴⁶ UNICEF and Save The Children, <http://www.crin.org/docs/Rift%20Valley.pdf> accessed on 29 July 2014.

Nearly 2.5 million people are in forced labour as a result of trafficking, with 22 to 50 per cent of them being children. While this is not necessarily an urban phenomenon, some forms take place mainly in urban areas, such as trafficking for sex work and trafficking that targets children who live or work on city streets. Children without family bonds and those lacking birth certificates or official registration documents can be at particular risk of trafficking and are among those most difficult for authorities to protect²⁴⁷. Trafficking and sexual exploitation also continues to be a major concern in Kenya, especially in the tourism industry, where Kenya is a country of origin, transit and destination for trafficked persons. Around 17 500 Kenyans are estimated to be trafficked annually²⁴⁸ for domestic work, forced labour, and commercial sexual exploitation. In 2011, the Kenyan national Child Helpline received 46 reports of child trafficking and 19 concerning child prostitution²⁴⁹. Internal human trafficking is the most identified form of trafficking in Kenya with women and children being the most commonly identified victims. Displaced persons are also particularly vulnerable to trafficking as they may more readily accept false offers of employment or education to escape the insecurity of displacement.

Child labour is, in general and even in the absence of trafficking, harmful to children's well – being. Estimates show that globally 215 million boys and girls aged 5 – 17 were engaged in child labour in 2008, 115 million of them in hazardous work²⁵⁰, with child domestic labour being a predominately urban phenomenon. Most of the domestic workers are girls, who are isolated and subject to often arbitrary disciplinary “educational” measures of their employers²⁵¹. Such living and working conditions often prevent girls from going to school, making it impossible for them to get educated and escape the poverty cycle.

²⁴⁷ UNICEF, 2012, p. 31.

²⁴⁸ ANPPCAN, http://www.anppcan.org/files/File/08_ChildTrafficking.pdf accessed on 29 July 2014.

²⁴⁹ US Department of State, <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm> accessed on 29 July 2014.

²⁵⁰ International Labour Office, 2010, pp. 5.

²⁵¹ UNICEF, 2012, p. 32.

Orphans and children living on the streets are particularly at risk and may become victims of violence and abuse, including harmful labour, recruitment into gangs and sexual exploitations. Children who lose their parents suffer stress and trauma in addition to the loss of parental love, care and protection and often their inheritance. The causes of violence are complex, but the main factors are poverty and inequality. Poverty aggravates already difficult conditions caused by, for example, chronic discrimination or violent conflict. Economic instability may also cause parents to take their children out of school to work in hazardous labour. Insufficient provision of public services and community infrastructure such as schools, recreational areas and other safe spaces are common to the cities of low – income countries. Children in slums experience deprivation from a very young age, which can then lead to frustration and violence. The limited access to birth registration systems contribute to the problem leaving many children unregistered and creating barriers for children to access services. Many children face long distances to reach health centres, child protection centres and child friendly courts. Also, urban gangs made up of mostly young people are known for committing crimes such as extortion, petty theft, selling or trafficking drugs, armed robbery, murder and carjacking. Children mostly join gangs around age 13, because these gangs can offer children a sense of identity, belonging and protection²⁵².

²⁵² UNICEF, 2012, p. 42 – 45.

CHAPTER IV: CONCLUSION

Never before has the world been as urbanised as today and, as we have seen, the number of people living in cities is ever increasing. This trend is especially visible in developing countries, where such fast growing urban landscapes put a tremendous strain on municipal resources, but may also offer great opportunities for adults and children alike.

Chapter I gave an introduction to the topic, explained the research questions, which are concerning with what children's rights and child protection systems especially in an urban setting and African context are and if they are influenced by the urban areas, in which a great number of children are living today. To close Chapter I the methodology used was described

Chapter II gave a comprehensive overview of the two main instruments for the protection of children's rights: the CRC and the ACRWC. Their structures, similarities and differences have been thoroughly examined. The chapter ended by explaining the concept of child protection and UNICEF's child protection strategy, which includes the definition of a child protection system being "...a set of laws, policies, regulations and services, capacities, monitoring across social sectors to prevent and respond to protection related risks"²⁵³, therefore answering the first research question. Protecting children against abuse, violence, neglect and exploitation and guaranteeing their all – embracing well – being is an obligation shared by many different actors, involving different elements of government as well as a broad array of civil society organisations and communities.

²⁵³ E/ICEF/2008/5/Rev.1, 20 May 2008, para. 12.

Chapter III can be seen as an answer to the second research question, as it discussed the phenomenon of urbanisation, its definition, benefits and challenges. We have seen that children, who live in overcrowded, insecure and insanitary settlements, are particularly vulnerable and face a multitude of deprivations and interacting risks such as family separation, living and working on the streets, sexual exploitation and abuse, HIV/AIDS and violence.

From the very beginning of their lives children are often put in a weak position, as their right to an identity or their rights to be registered after birth are not guaranteed. In Kenya, for example, recent statistics for birth registration state that overall only 57.53 per cent of the children are registered²⁵⁴. This may be explained with the low awareness of the importance of birth registration, as well as the lack of access to health and registration facilities. After the child is six months old, a penalty fee must be paid upon registering the child and the procedures are more complicated, deterring more parents from registering their children. Children without birth certificate are particularly vulnerable to child protection violations and may become victims of trafficking, be treated as adults in prison and have more difficulties in social services. The authorities cannot sufficiently protect them, as they do not even know that these children exist in their countries.

Chapter III has also elaborated on the various health issues in overcrowded and poor settlements, such as mal – nutrition leading to stunting, the prevalence of respiratory illnesses, and the high burden of diseases, which are often fatal for children under the age of five and also the consequences of deprivation to children’s mental health. These factors impede the fulfilment of children’s rights to the highest attainable standard of **health** (Art 6 CRC and Art 24 ACRWC), but also the children’s right to **life** (Art 6 CRC and Art 5 ACRWC) and the principle of the **best interest** (Art 3 CRC and Art 4 ACRWC) of the child. States are

²⁵⁴ Annual Civil Registration Statistics Report 2010, July 2011.

obligated to *protect* children under their jurisdiction from interferences with or violations of their rights and ought to develop strategies to reduce the risks and threats posed to children's physical and psychological well – being. This thesis has highlighted the CRC Committee's stance on the right to health being considered an inclusive right, indispensable for the enjoyment of all other rights in the Convention, which extends to timely and appropriate prevention, health promotion, curative rehabilitative and palliative services and is also a right to grow and develop children's full potential and live in conditions that enable them to attain the highest standard of health²⁵⁵. If the situation, as described in Chapter III's Challenges of Urbanisation, remains as it is, governments of many countries are not fulfilling their obligations to diminish infant and child mortality, combat disease and malnutrition and provide food, clean drinking water and child care.

National and local governments must pursue initiatives and policies to improve the fulfilment of children's rights and guarantee their safety. National policies should enable municipalities to deliver for children, promote child – friendly regulations and budgets, provide technical assistance to community – based workers and prepare measures to protect children and their families in crisis situations. Such efforts can further be facilitated and made much more available through collaboration between authorities and child rights organisations, such as UNICEF or Save the Children. Bottom – up approaches and the involvement of civil society and community organisation are often of greatest importance to the improvement of children's lives²⁵⁶. States could comply with their international obligations by introducing nutrition programmes, including treatment for malnutrition, vitamin A supplementation and deworming, as well as the promotion of breastfeeding and improved hygiene practices²⁵⁷, as well as by investing in water and sanitation coverage, which would effectively reduce a multitude of problems in slums. The prevalence of HIV/AIDS has been

²⁵⁵ CRC/c/GC/15, 17 April 2012, para 2.

²⁵⁶ UNICEF, 2012, pp. 49 – 50.

²⁵⁷ UNICEF, 2012, p. 55.

a major reason for concern for many years, educational and awareness – raising programmes on various channels, i.e. television, social media or community based group activities, could help spread the use of protection.

The Right to **Education** is often massively impeded, as there are often not enough schools in walking distance or families cannot afford sending their children to school due to the combination of costs for school uniforms, textbooks or exams. We have read that the core obligations of States with regard to the right to education are the provision of free and compulsory primary/basic education, the progressive introduction of free secondary and higher education, the access to public educational institutions and programmes on a non – discriminatory basis, the guarantee of an educational quality that conforms to the internationally recognised objectives and to guarantee parental choice in the education of their children²⁵⁸. The situation that has been described in Chapter III, makes it evident, that many governments are not fulfilling said obligations, as there is still an extremely large number of children not attending school, due to the distance to educational facilities or due to embedded costs, i.e. for school uniforms or exams, which most families simply cannot afford. It is often especially difficult for girls, as they are more often forced to stay at home than boys to help with domestic chores, thus also contravening their right to **non – discrimination**. Governments must develop initiatives and strategies to promote cost free education and raise awareness that it is crucial for girls to attend school to be able to leave the poverty cycle. Access to education in informal settlements is of utmost importance. Mobile libraries, for example, could be a useful to guarantee access to books for all children. Other forms of training, such as vocational courses can be particularly useful for adolescents. Whether through classroom or on – the – job training, apprenticeship or skill specific courses should aim to increase young people’s employability²⁵⁹.

²⁵⁸ Ferenci, 2012, pp 328 – 329.

²⁵⁹ UNICEF, 2012 p. 58 - 59

Lastly, we have seen that children are in general more vulnerable than adults and often exposed to various protection risks, such as physical and mental violence, child labour, trafficking in children or sexual abuse. These risks are often heightened in slums, where many children live and work in the streets and often lack parental care and attention as well as safe spaces to play and learn. Exposure to violence has negative consequences for children's development and health. Trafficking of children and child labour are serious issues, especially for unaccompanied and unregistered children, violating children's rights to social security and physical and mental integrity. The ideal protection is a stable family and strong community to mitigate the risk of social exclusion and enable children to recover from harm that has already been done.

Governments need to develop child protection systems including laws and policies and their effective implementation in all areas to ensure that no harm is done to children no matter where they live. In order to actually reach every child, cooperation with local NGOs or UN agencies is strongly recommended.

It can generally be said that the most efficient ways to tackle a multitude of said issues and violations of children's rights are inclusive and participatory programmes, where children's voices are heard, respected and included in governmental decisions. Such programmes may open various educational options, civic engagement, foster women's empowerment and give children a sense of belonging and purpose. The Forces of Change programme in Kenya has already been discussed. Additionally the UN – HABITAT Safer Cities Programme seeks to tackle violence within the world's cities, with a strong focus on Africa, by developing municipal – level prevention strategies. Participatory processes are used to establish regional plans to reduce overall levels of urban violence. The programme holds regional conferences where young people have the possibility to talk with government agencies,

civil society organisations, the police and other relevant stakeholders to identify the cause of and possible approaches to violence among their communities²⁶⁰.

Concluding, this thesis has shown that it can be affirmed that urbanisation does indeed influence the fulfilment of children's rights and the guarantee of child protection. While there certainly are benefits to living in an urban area, one must not ignore the challenges posed to children's development and well – being. Especially in developing countries, i.e. as we have seen with regard to the African continent, there are pressing health concerns, such as the spread of diseases, the prevalence of HIV/AIDS or malnutrition, that impede children's rights to the highest attainable standard of health. Furthermore, educational rights are infringed as there is often not enough infrastructure or money in families available to send all of their children to school. Here, physical proximity does not always guarantee the actual availability, which emphasises the governments' obligations to ensure that really every child is able to attend school and receive an education. Unsafe, overcrowded settlements foster urban inequities and poverty, which in turn may lead to increased violence and abuse, showing that much must be done to effectively strengthen child protection systems in all situations to give children the chance of having a better, healthier future.

²⁶⁰ UNICEF, 2012, p. 60.

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ABSTRACT - ENGLISH

The thesis “Children’s Rights in an Urban Context” deals with the benefits and challenges of the rapid growth of urban settlements and their impact on children’s rights and child protection systems.

After a comprehensive overview of the relevant children’s rights and the explanation of what a child protection system entails in Chapter II, the author answers the question of what urbanisation and its consequences entail in Chapter III. In her last chapter, the author then reflects on the influence of urbanisation’s consequences on the fulfilment of children’s rights, with a specific focus on Nairobi, Kenya. She concludes that, while living in an urban area has many benefits such as access to health care and education, rapid and unplanned urbanisation often result in a vast number of people living in slums or other illegal and overcrowded settlements, thereby reinforcing inequities and creating dangerous living environment for children harmful to the fulfilment of their rights.

An extensive literature review was completed on statistics, children’s rights in international and regional contexts, child protection systems and urbanisation. The thesis is furthermore based on the author’s personal experiences and observations during her work with UNICEF’s Kenya Country Office in Nairobi, Kenya.

ABSTRACT – GERMAN

Die Thesis "Children's Rights in an Urban Context" befasst sich mit den Vorteilen und Herausforderungen des rasanten Wachstums von städtischen Siedlungen und deren Auswirkungen auf Kinderrechte und Kinderschutzsysteme.

Nach einem umfassenden Überblick in Kapitel II über die relevanten Kinderrechte und die Erklärung, was ein Kinderschutzsystem beinhaltet, beantwortet die Autorin die Frage, was Urbanisierung und ihre Folgen mit sich bringen kann (Kapitel III). In ihrem letzten Kapitel, reflektiert die Autorin den Einfluss der Urbanisierung auf die Umsetzung der Kinderrechte, im Speziellen bezogen auf Nairobi, Kenia. Sie kommt zu dem Ergebnis, dass, obwohl das Leben in einer urbanen Gegend viele Vorteile wie den Zugang zu medizinischer Versorgung und Bildung mit sich bringt, schnelle und ungeplante Urbanisierung häufig dazu führt, dass ein großer Teil der Bevölkerung in Slums oder anderen illegalen und überfüllten Siedlungen wohnt. Dadurch werden wiederum Ungleichheiten intensiviert und eine gefährliche Umgebung für Kinder geschaffen, in welcher deren Rechte oft nicht ordnungsgemäß erfüllt werden.

Die Thesis stützt sich auf eine umfangreiche Statistik- und Literaturrecherche betreffend Kinderrechte im internationalen und regionalen Kontext, Kinderschutz und Urbanisierung. Des Weiteren basiert die Thesis auf persönlichen Erfahrungen und Beobachtungen der Autorin während eines Praktikums beim UNICEF Kenya Country Office in Nairobi, Kenia.

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