Street-Connected Children and the Right to Refuse “Rescue”

Presented by Catherine Scerri, BA, LLB(Hons) Monash, MHumRightsLaw Melb

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In urban centers in the Philippines and all over the world, the street is vital to the lives of children who rely on it as a source of livelihood, peer support, refuge and recreation. A variety of factors push and pull children onto the street with extreme poverty often a driving structural cause. Far from being a homogenous group, ‘street children’ are from diverse circumstances and backgrounds, uniquely motivated and challenged. The most typical societal response to the presence of children on the streets and in public places is to remove them. Such responses are typically motivated either by concerns about welfare or by a desire to suppress delinquency. In the Philippines the decades-old practice of ‘rescue’ of street children swings between welfare and repression, frequently within a single operation. The child’s willingness to be rescued is systematically rendered irrelevant, with most ‘rescues’ being carried out against the will of the children involved based on an idea that street children have ‘thin agency’. This paper will explore how the recent UN General Comment 21 on Children in Street Situations gives strength to the argument that street-connected children have the right to refuse to be ‘rescued’.

‘…(A)lthough residential care is not an ideal environment for children, it is legally and morally obligatory upon governments to place street children in residential care to ensure their safety and their basic rights and needs are met. Sometimes this may require the local department of social services to exercise force in the best interests of the child and remove him from the street, even against his will.’

According to Noam Schimmel children do not have a right to refuse to be rescued from the street because their lack of education means they do not have real autonomy. He claims that governments therefore have a responsibility to force children from the street to fulfill children’s rights. This is an erroneous interpretation of the UNCRC that ironically attempts to provide a legal and moral justification for the violation of children’s rights.

2 Schimmel above n.1, 215
For at least thirty years the Philippine government has responded to the consistent presence of children living or working on the street by removing them, often forcefully. Such actions have at different stages been called “round-ups”, “rescues” and, more recently “reach-outs”. These operations are motivated by a variety of stated and unstated reasons including welfare, law and order, high-profile events and beautification. ‘Zero incidence of street children’ is an oft-stated goal of such operations. Notably, the policies guiding such operations frequently cite the UNCRC as a justification for removing children from the street.

Until recently, children in street situations have been invisible in human rights discourse, even in the UNCRC; although arguably nearly every right in the UNCRC is impacted when a child is living or working on the street, that most-widely ratified treaty makes no reference to children in street situations. This group of children was first officially recognized by the Committee on the Rights of the Child, in June 2017 in the landmark General Comment 21.

This document emphasizes full respect for the autonomy of street-connected children, the need for nuanced, rights-based approaches in dealing with street-connected children and. Importantly, the General Comment calls for States to immediately abolish laws and policies that allow for the ‘round-up or arbitrary removal of children from the streets or public spaces’, noting that such practices are directly discriminatory against children in street situations. This essay will consider if the General Comment in effect, gives children a right to refuse “rescue”.

PART I – STREET CHILDREN: TO SAVE OR REPRESS?

Defining street children

The difficulty in defining exactly what is meant by “street children”, due to the heterogeneity of the group in question, has long been acknowledged. Attempts to categorise children, particularly as those “on” or “of” the street have been resisted for being inaccurate and unhelpful. More recently, the terms “children with street connections” or

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5 See for example DSWD Administrative Order No. 08: Standards for Community Based Services for Street Children (Philippines) 2009 III(1) and Protocol to Reach Out to Street Children (Philippines) Council for the Welfare of Children Board Resolution No.2, series of 2011, 31 August 2011 II(a)
6 UN Committee on the Rights of the Child General comment No. 21 (2017) on children in street situations CRC/C/GC/21 (21 June 2017). Hereinafter this document will be referred to simply as the General Comment
7 General Comment No. 21, above n.6, paragraphs 12
8 General Comment No. 21, above n.6, paragraphs 14 & 26
10 Glauser, above n.9, 130 and Terre des Hommes ‘Children in Street Situations’ (Sectoral Policy, Terre des Hommes, January 2010)
“children in street situations” have been adopted in preference to “street children” in some circles.¹¹ These terms recognise that the spectrum of children’s connectedness with the street is broad. For some children, the street,¹² is the arena in which their whole life and the formation of their identity takes place. For other children the street is merely a workplace or playground.¹³ What is of importance is that for each child there are vital connections to the street,¹⁴ not just related to thoroughfare but to ‘constant process(es) of reciprocal interaction(s)’, including emotional connections,¹⁵ and these are important in the life of the child. Moreover, these new monikers place the emphasis on the child, not the street.¹⁶ This is an important acknowledgment that our concern is, or should be, about the child, and not about the street or how the street is being used.¹⁷

**Push and Pull Factors & Multiple Deprivations**

The situation of children on the street is perhaps most usefully described in relation to vulnerabilities, multiple deprivations and migration. Buske recognises that street children start from a position of particular vulnerability as a result of factors within their homes and communities.¹⁸ These factors include rapid urbanisation, violence and inadequate housing. Frequently it is this vulnerability combined with a precipitating emergency that triggers the child’s migration to the street. A wide variety of push and pull factors influence this process.¹⁹ Push factors that encourage children or force children onto the street include family breakdown, insufficient social protections and abuse. Pull factors help make the street attractive to the child and may include spatial freedom, financial independence, peer groups and adventure.²⁰ In developing countries like the Philippines it is generally understood that poverty is a common, though not determinative denominator; both making children vulnerable to going to the street and precipitating their decision to do so.

While on the street, children typically experience multiple deprivations of their rights and are exposed to danger, abuse, exploitation and violence. Street children are much more likely than other children to come in contact with police and these interactions are overwhelmingly characterized by ‘psychological, physical and sexual violence, and arbitrary abuse of power’.²¹ Children working on the street typically work extremely long hours for

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¹¹ The Committee on the Rights of the Child has adopted “children in street situations” – most notably in the *General Comment No. 21*, above n.6
¹² Street is interpreted broadly to include unoccupied dwellings, parks, plazas, wasteland and public spaces
¹³ de Benitez, Sarah Thomas, ‘Reactive, Protective and Rights-Based Approaches in Work with Homeless Street Youth’, *Children, Youth and Environments* 2003 (13(1)) 1, 22 and Terre des Hommes above n.10
¹⁴ *General Comment No. 21*, above n.6, paragraph 4
¹⁵ de Benitez, above n.13, 21
¹⁶ Terre des Hommes, above n. 10, 8
¹⁷ Ibid
¹⁹ Ibid
²⁰ *Protection and Promotion of the Rights of Children Working and/or Living on the Street* above n.9, 12
²¹ Buske, above n.18, 100
very little reward, often remaining hungry at the end of the day. They are exposed to or involved in substance abuse and are often unable to access education or social services. Stigmatization and discrimination are daily occurrences as is exploitation by unscrupulous adults.22

Despite these experiences, life on the street is not all negative. Children with street connections relate their accounts of ‘fun, adventure, play ... financial independence and of meaningful relationships in the streets.’23 Insufficient resources have been invested into assessing the impact of street life on children but there is some evidence ‘that street children are actually healthier and possibly less stunted than their contemporaries living in slums’, their moral values are not replaced by asocial attitudes and that ‘life and livelihood skills learned on the street may be more useful than rote learning’.24 While often extremely burdensome, some street work plays a positive part in children’s daily lives and identity formation, encouraging resourcefulness and enterprise as children learn new skills and develop livelihood opportunities.25 De Benitez argues that ‘even destructive activities such as drug use may not be unrelentingly negative’, playing a role in helping children survive deeply distressing conditions.26

**Constructs of childhood**

The passing of the United Nations Conventions on the Rights of the Child27 (UNCRC) has prompted increasing recognition of the importance of the life stage defined as childhood.28 While there is contention about whether childhood is a modern invention or not29 it is clear that conceptions of childhood around the world are diverse. It is widely acknowledged that children in western societies have become increasingly less economically-valuable post-industrialisation. Instead, their value to their parents and society has become psychological, with the focus on what they ‘will become’.30 Childhood is thus ‘dedicated purely to growing up’.31 In the less resource-rich developing world however, many children still play an important economic role in their families and thus are valued differently. Children often

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22 de Benitez, above n.10, 19
23 Ibid, 18
24 Ennew, Judith & Jill Swart-Kruger ‘Homes, Places and Spaces in the Construction of Street Children and Street Youth’, *Children Youth and Environments* 2003 (13(1)) 81, 90
25 de Benitez, above n. 13, 19
26 Ibid
28 Morrow, Virginia ‘Understanding Children and Childhood’ *Centre for Children and Youth People Background Briefing Series*, no.1, 2011, 2
29 Wells, Karen, *Childhood in a Global Perspective* (John Wiley & Sons, 2nd ed, 2015), 11
31 Bar-On, above n.30, 66
take on significant economic responsibilities for their families. Accordingly, their value is on ‘who they are, rather than what they may become’.

Despite the Preamble of the UNCRC claiming it takes ‘due account... of the traditions and cultural values of each people’, it is argued that the notion of childhood reflected is western, aiming to exempt, and even forcibly exclude, children from adulthood. Children’s previously recognised right to work is omitted, suggesting that children’s work is incompatible with the notion of childhood as a period of innocence, play and learning. Moreover in the UNCRC’s imagery of childhood, the family is the ‘natural environment for the growth and well-being’ of children, with adults playing essential roles of caregivers and protectors. Children are imagined to grow up in ‘a sound family life defined by supportive parents and intimate relationships, and adequate social provisions of food, shelter, clothing and quality schooling’, unburdened by adult responsibilities, until they reach the age of independence and transition to adult life.

This construct of family and its moral and economic responsibilities reflects western cultural norms in which children follow a linear course of maturation, achieving specific developmental milestones until they gain independence at 18 years of age or older. While it can be argued that the UNCRC can and should be interpreted more broadly than this, concepts of childhood are deeply ingrained and strongly influence the way we respond to and deal with children, how we define their best interests and which rights we prioritise.

**Victims or threats?**

Within the construct of childhood outlined above – whether western or modern, ancient or universal – children living, working or playing on the street are an anathema, deviating from the agreed norms on the path towards adulthood. Categorising such deviations as a pathology and juxtaposing the street against the loving home as an amoral, dangerous place, societies have, for more than 150 years, found justification to intervene in the lives of street children. The kinds of interventions deemed appropriate typically depend on which of two perceptions of street children are adopted: helpless victim or juvenile

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32 Morrow, above n. 28, 5
33 Westwood, Joanne, ‘Childhood in Different Cultures’ in Maynard, Trisha & Sasha Powel An Introduction to Childhood Studies, (Sage, 2013), 11, 16
34 It has been argued that the 1924 Geneva Declaration of the Rights of the Child which started that ‘child should be put in a position to earn a livelihood’ gave the child a right to work.
35 Wells, above n.29, 16
36 UNCRC, above n.27, Preamble
37 Schimmel, above n.1, 212
38 Westwood, above n.33, 15 and Wells above n.29, 16
39 Ennew, above n.24, 84
40 Grugel, Jean and Frederico Poley Martins Ferreira, ‘Street Working Children, Children’s Agency and the Challenge of Children’s Rights; Evidence from Minas Gerais, Brazil’ Journal of International Development 2012 (24) 828 – 840, 828
delinquent. Responses are adapted accordingly: save or repress – with a frequent overlap between the two in both purposes and outcomes. In both cases the ‘tendency is to force children to sever links with their street support networks, and to regard their experiences on the street as bad or worthless’.  

Where the child is viewed as a helpless victim, the response seeks to save or rescue him/her by removing him/her from the hazardous street and placing the child in homes or shelters, albeit frequently not in a ‘sound family life’. This protection or welfare model relies on a conception of children as inherently vulnerable and weak. The adult is the saviour or redeemer, swooping in and rescuing the child. The child, as a rational decision maker who may have chosen to take refuge in the street to escape from a more negative environment or who is actively seeking to take advantages of the economic opportunities available in the street, is reduced to a mere object of welfare. His/her assumed vulnerability combined with a desire to return the child to a conventional model of childhood justifies removing him/her, even by force.

The other common response to street children is motivated by fear, reflected in unfounded and unhelpful statements such as ‘... large populations of uneducated, rootless and emotionally challenged individuals endanger all of us’ or ‘the longer a child lives on the street, the greater his tendency to exhibit symptoms of psychopathy’. Where children are seen as a threat; to public order, or sensibilities, the typical response is to control – typically through the use of laws such as curfew, vagrancy and truancy. This type of regulation seeks to exclude children from the street by regulating their activities there, frequently leading to massive round-ups of street children in which they are summarily and indiscriminately removed from sight. Such laws are applied discriminatorily against those children or youth whom society does not want to see on the street, criminalising their efforts to survive, forcing them from public spaces – either into jail or hiding.

Importantly, both of these responses respond to the child’s visibility on the street. While there are arguably many more children needing assistance in low visibility areas – such as slums or rural areas – it is street children that attract attention and intervention; ‘slum children are often not taken into account publicly until they have become “street children” – in other words a public and visible problem’. Moreover, once children are removed from visibility the problem is deemed to be resolved. This emphasis on visibility is particularly evident in the use of a twitter account by the Philippine government, ‘@savestreetskids’,

41 Ibid
42 Schimmel, above n.1, 211
44 Schimmel, above n.1, 211
45 Buske, above n. 18, 87
46 Terre des Hommes, above n.10, 9
through which the public can ‘report sightings of street families’ with the expectation that the government will then respond by ‘saving’ (removing) the street family or children, after which the problem will have been solved.

**Philippines’ confused perceptions**

In the Philippines, government approaches to street children and families have been motivated both by fear and protection, often simultaneously. The rescue of street children in the Philippines dates back to the APEC Ministerial Meeting of 1996 during which street children were rounded up as part of widespread beautification efforts. Such round-ups have continued over the succeeding years. Such programs have reflected a tendency to see street children as a threat, aiming to:

- restore public order, secure homes and make streets safe
- reduce criminality among street children and make them productive and respectable citizens; and
- ‘remove things that when seen would provoke a negative emotion’

In 2008, the use of the term “rescue” was challenged by the ‘Sagip or Huli’ study that showed that street children understood government rescue of them to mean “arrest”, likening it more to warrantless arrest than to salvation. That study found that rescue, or the process of a government agency physically removing a child from the street for the stated purposes of child protection, was indiscriminate, involuntary, harmful and ineffective. It was claimed that children’s rights were frequently violated at every stage of the rescue process.

Analysis of the process and structures in place to rescue children in the Philippines found that even those involved in carrying out the removals of children had mixed purposes or confused their objectives in practice. This confusion of objectives by rescuers tended to criminalise children, indicated particularly by use of terms such as ‘recidivist’ to refer to a

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50 Ibid

51 Scerri, Catherine, *Sagip or Huli? Rescue of Street Children in Caloocan, Manila, Pasay and Quezon Cities* (UNICEF, 2009), 89 citing Metro Manila Development Authority

52 Scerri, above n. Error! Bookmark not defined.

53 Ibid, 2

54 Ibid, 145

55 Ibid, 144
child who had been repeatedly rescued, ‘complainant’ to refer to someone who reported a street child and ‘rules of engagement’ in relation to the process of rescuing a child.\textsuperscript{56} 

More recently the objectives of rescuing children from the street have been, at least as stated in policies, protective;

‘\textit{(We) need to get these families off the streets considering the dangers that they are exposed to... It is their right to be protected and to be given services}’ \textsuperscript{57}

However, policies and practices frequently confuse protective approaches with those based on fear, or a desire for ‘cleanliness’. A recent government press release entitled ‘\textit{Street children are Victims not Criminals!}’ demonstrates this confusion. While clearly aiming to project the protection model, the fear that street children trigger is barely suppressed, with street children defined as children ‘vulnerable to, and at the risk of, committing criminal offenses’ as the result of a number of factors including being ‘abused, exploited ... or a member of a gang’.

Clearing operations leading up to the November 2015 APEC Leaders Summit in Manila, criticised for putting a ‘cynical veneer of cleanliness on the city’, \textsuperscript{58} were justified using protection while apparently motivated by national shame. Government authorities claimed they were ‘rescuing’ children\textsuperscript{59} while simultaneously Manila’s Mayor admitted that rescues were intensified because of the need to ‘protect our country’s image’ because it would be embarrassing for foreign visitors to see children sleeping on the street.\textsuperscript{60} Similarly, the Philippine government notoriously removed more than 300 children and adults from the street prior to the visit of the Pope in 2015, purportedly for their ‘welfare’, only to return them to the street immediately after the Pope’s departure.\textsuperscript{61}

\textbf{The street: inherently dangerous?}

Whether motivated by fear, protection or embarrassment, policies that seek to intervene with children in street situations are premised on the assumption that the street is an inherently dangerous or inappropriate place for children. This assumption deserves to be addressed and challenged particularly in relation to other relative dangers. Many children who migrate to the street do so to escape abuse and violence at home. For those children

\begin{itemize}
  \item \textsuperscript{56} Ibid, 135 and 145
  \item \textsuperscript{57} Department of Social Welfare and Development, above n.47
  \item \textsuperscript{59} Ibid
  \item \textsuperscript{60} Yee, Jovic, ‘“Rescued’ street families homesick’ \textit{Philippine Daily Inquirer} (online) 18 November 2015 12:37am <http://newsinfo.inquirer.net/740526/rescued-street-families-homesick>
\end{itemize}
the street, with all of its risks, is safer than home, or represents a transitional stage between leaving ‘a difficult or unpalatable home-life and accessing better employment’. Some children who have experienced ‘rescue’ in Manila feel safer on the street than in institutions where they experience beatings, torture and even murder.

The case of ‘Frederico’ in the Reception and Action Center (RAC) in Manila is an example of this. A photograph of ‘Frederico’, an extremely emaciated child with special needs lying naked on a concrete floor was taken inside that government shelter in 2014, seven months after the child was admitted, suggesting his extreme neglect while in a State-run shelter. The public outcry over the photo led to investigations into the dismal conditions of children in such government shelters and ultimately led to the closure of RAC.

Schimmel would argue, correctly, that the UNCRC requires governments to ensure that homes and institutions are safe and free from abuse. However, in reality, developing countries like the Philippines are as-yet under-resourced and unable, or unwilling, to meet the standards required by the UNCRC. Simply working on the assumption that the streets are inherently the worst place for children to be is not only simplistic but potentially harmful.

Importantly, for many children there is no place to go but the street. Manila, like many of the developing world’s densely-populated cities, offers very few places for children to gather and play. Where they have them, houses for poor families are vastly inadequate and frequently provide insufficient sleeping space for all family members, let alone safe places for children to play. As the remaining public recreational spaces, such as malls and plazas, are rapidly commercialised, the street becomes the only affordable arena in which many children can socialise. While acknowledging the real dangers of children playing on the street, it is also important not to penalise children for the failure of governments to provide safe, child-friendly play spaces.

A persistent discourse driving the urge to ‘rescue’ is the idea that children on the street are forced there by coercive adults to earn money which money-hungry adults then pocket. While there is no doubt that some children are in this position, many more children, especially in Manila, make the choice to go to the street to seize the economic opportunities offered by the informal economy so that they can help their families or support

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62 de Benitez, above n.10, 19
themselves.\textsuperscript{65} This is not always a negative, or dangerous, experience. For some children, working on the street is the means by which they can stay in school or allow a sibling to go to school. Many street-vending children in Nigeria did not find their work burdensome or exploitative but simply understood it as ‘their contribution to family life, just like doing domestic chores at home’.\textsuperscript{66} Children working on the street have been found to gain practical skills that contribute to their self esteem and possible future career.\textsuperscript{67} While being careful not to romanticise the street or undermine the risks that it can pose to children, it is good to remember that for many children ‘street life is comparatively satisfactory’.\textsuperscript{68}

\textbf{PART II – A RIGHT TO REFUSE RESCUE?}

\textit{Right to Participation}

The UNCRC’s principle of respect for the views of the child\textsuperscript{69} is asserted as a being of critical importance, fundamentally shifting children from objects of welfare to social actors and the bearers of rights and, by so doing, changing the landscape for both children and adults. Article 12 guarantees children who are capable of forming a view the right to express his/her views freely in all matters affecting him or her and to have those views be given ‘due weight in accordance with the age and maturity of the child’. This right does not go so far as to provide a right to self determination but relates to the child’s right to be involved in decision making.\textsuperscript{70} Articles 4 and 14 further ‘emphasise the need to respect the child’s developing capacity for decision making’.\textsuperscript{71} Article 9(2) provides added support for the child’s right to be heard in matters involving his or her separation from his or her parents.\textsuperscript{72}

Under the rights-based approach promoted by the General Comment, children in street situations need to have their agency in decision-making increased and they should be ‘empowered as socioeconomic, political and cultural actors’.\textsuperscript{73} The approach emphasises ‘full respect for their autonomy’ and promotes their resilience and capabilities.\textsuperscript{74}

\textsuperscript{65} Lamberte, Exaltacion E. ‘Ours to Protect and Nurture: The Care of Children Needing Special Protection’ \textit{National Project on Street children and UNICEF}, 2002, 269
\textsuperscript{66} Okoli, Rosemary C.B and Viviene E. Cree ‘Children’s Work: Experiences of Street-Vending Children and Youth People in Enugu, Nigeria’, \textit{British Journal of Social Work} 2012 (42) 58, 67
\textsuperscript{67} Ibid, 69
\textsuperscript{68} Bordonaro, Lorenzo I., ‘Agency does not mean freedom. Cape Verdean street children and the politics of children’s agency’, \textit{Children’s Geographies} 2012 (10(4)) 413, 416
\textsuperscript{69} UNCRC, above n.27, articles 5, 9, 12, 13 and 14
\textsuperscript{71} Ibid
\textsuperscript{72} UNCRC, above n.27, article 9(2)
\textsuperscript{73} General Comment No. 21, above n.6, paragraph 12
\textsuperscript{74} Ibid
approach is recognised not only as morally and legally imperative, but the most sustainable approach to creating long-term change for children in street situations.\textsuperscript{75}

There is no minimum age at which a child acquires the right to express his or her views and the UN Convention on the Rights of the Child (UNCRC) rejects specific age barriers to preclude children’s participation in decision-making. Instead, the child’s capacity to understand and assess the implications of the matter in question are important.\textsuperscript{76} The Committee has expressed concern that in relation to decisions to remove children from family environments, ‘decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child’s life and future.’\textsuperscript{77}

It is therefore important to consider how a child’s capacity to understand and assess implications could be gauged in order to ensure that his/her views are given due weight. The first option would be to place an onus on the child to prove his or her competence. Under this model, the child would need to demonstrate that s/he is capable through some form of assessment of judgment. More radically, a presumption in favour of competence could be introduced, placing the onus on adults to demonstrate that the child does not have the capacity to participate.\textsuperscript{78} Either way, the process of assessing a child’s competency is likely to reflect biases against street children’s capacity to make competent choices.

\textbf{Thin Agency}

Children on the street frequently make decisions – such as to run away, drop out of school or even use drugs – that are difficult for adults to understand because they deviate from what is considered to be appropriate childlike behaviour within accepted constructs of childhood. Consequently, instead of being recognised as exercises of agency, they are seen as poor or constrained decisions, ‘severely limited by the child’s incomplete personal and intellectual development, impoverished background and the unstable and often hostile environment in which he is living’.\textsuperscript{79} Alternatively, the decisions themselves are seen as evidence that the child does not have the capacity to understand and assess implications. In such circumstances, where children are forced, often by social and economic circumstances, to make choices in ‘highly restrictive contexts, characterized by few viable alternatives’, it is argued that children have ‘thin’ agency.\textsuperscript{80} This categorization is used to justify the removal of their full agency and to give the State the power to override their decisions.\textsuperscript{81} Decisions

\textsuperscript{75} Ibid
\textsuperscript{76} UNICEF, above n.70, 155
\textsuperscript{77} UN Committee on the Rights of the Child (CRC), \textit{UN Committee on the Rights of the Child: Report on the Fortieth Session (Geneva, 12 to 30 September 2005)}, 17 March 2006, CRC/C/153, para 658
\textsuperscript{78} Lansdown, Gerison, \textit{The Evolving Capacities of the Child} (UNICEF Innocenti Research Centre, 2005) 50
\textsuperscript{79} Schimmel, above n.1, 211
\textsuperscript{80} Mizen, Phillip and Yaw Ofosu-Kusi, ‘Agency as vulnerability: accounting for children’s movement to the street of Accra’, \textit{The Sociological Review} 2013 (61) 363, 369
\textsuperscript{81} Ibid
are then said to be made ‘in the best interests of the child’ regardless of how the child defines his or her best interests.

This use of ‘thin agency’ as a mechanism to restrict children’s autonomy is a precarious interpretation of the UNCRC’s ‘social actor’ model. While beginning by recognising children as social actors, as soon as the child is considered at risk of harm there is a shift back to a ‘children as objects’, or welfare approach. The child’s capacity to decide is vanished and the intent to ‘save’ the child from an un-ideal childhood re-emerges, bound by the same constructs that triggered interest in the child on the street to begin with; childhood as innocence, play and learning; home and family as the domain of children. This reaction is premised once again on the presumption of the street child as a helpless victim rather than as an autonomous rights holder.

**Rational Choice**

Considering children’s decisions to go to the street and to stay on the street as opportunistic rather than fatalistic can significantly shift the understanding of their agency. While it is important not to ignore the significant structural factors pushing children onto the street or romanticise street life, there are multiple reasons behind any decision for a child to move to, or be on, the street.

‘Street children might not be lodged in the life-patterns that the middle class impose on young people, but their reward from trying to maintain a minimum standard of living that their parents and governments are unable to provide them is infinitely preferable to living in the absolute poverty that surrounds them.’

The street offers considerable economic opportunities to children motivated by a desire to contribute to the economic wellbeing of their families or to their own wellbeing. They choose to take advantage of the informal street economy as a way of meeting these needs. Other children move street-ward as a way of escaping violence, abuse or deprivation, the street offering a better alternative to the homes from which they have come. Yet other children are pulled by the attractions the street can offer – independence, freedom, social connections. As discussed above, it is important to challenge the presumption that the street is a necessarily an unhealthy environment for a child or ‘developmentally incapacitating’.

In many instances it is the child’s vulnerability that triggers his or her decision to move to the street. Such a decision is an active and rational exercise of agency by the child as a

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83 Bordonaro, above n.68, 416
84 Bar-on, above n.30, 65
85 Schimmel, above n.1, 212
social actor. To invalidate this choice completely on the basis of the vulnerability would fundamentally undermine the child’s right to have his or her views be given appropriate weight. Moreover, attaching qualifications to the exercise of autonomy that require decisions that are made to be ‘appropriate’ ones according to a moral framework of childhood will effectively nullify the concept of autonomy.

So... can children refuse to be rescued?

Neither the UNCRC nor the General Comment suggest a total deference to a child’s point of view. Consequently, it is difficult to argue that children have an absolute ‘right to refuse rescue’. However, what is clearly established by the UNCRC, and significantly developed in the General Comment, is a rights-based approach that recognises the child as a rights-holder and requires his/her active engagement in decisions that affect him/her. The critical question then becomes; how do we appropriately balance participation and empowerment rights with the child’s right to be protected, including from situations into which s/he may have been coerced or which may have arguably arisen from decisions made from a position of ‘thin agency’?

The General Comment provides useful guidance to the process of answering these questions. Acknowledging that ‘interventions that do not respect children as active agents in the process of moving off the street into alternative care do not work’, the General Comment pushes us towards emphasising process as much as outcome.

The General Comment suggests approaches that provide ‘practical and moral support to children on the streets’ and do not require or coerce them to ‘renounce their street connections’. Providing a range of alternative care options including drop-in and day-care centers, night shelters and temporary residential care facilities is suggested. The Committee notes that deprivation of liberty in locked facilities can never be called protection and that institutionalisation should be used as a last resort. Where alternative care is necessary, its development and provision should be done in consultation with children themselves in a way that ensures that children are not ‘forced to depend on their street connections for their survival and/or development and that they are not forced to accept placements against their will’. Contrary to the current practices of ‘rescue’ in the Philippines, the General Comment notes that ‘a transitional stage between the streets and a long-term placement is often required’. In relation to concerns about the quality of care, the General Comment requires that where ‘alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child’.

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86 General Comment No. 21, above n.6, paragraph 45
87 Ibid, paragraphs 44 & 45
88 General Comment No. 21, above n.6, paragraph 44
89 Ibid
90 Ibid, paragraph 45
In response to concerns over thin agency, instead of simply disregarding a child’s views, a rights-based approach would seek to increase children’s capacity to make decisions. It would require that children’s views be given due weight, without discrimination and in accordance with his/her unique and evolving capacities. Children with street connections would not be accorded any less weight for their views just because their decisions may deviate from moral or social norms. Instead, measures would be put in place to ensure that children are given as much information and support as possible to be able to make informed choices.

Critically, the General Comment specifically calls for the abolition of laws and policies that seek to *arbitrarily* remove children from the street, noting that these are directly discriminatory against children in street situations. This implies that any process of removing a child from the street must be done in a considered manner, in which decisions to remove must consider children’s individual circumstances and views and not be based simply on visibility in public spaces. In circumstances where children are being ‘rounded-up’ arbitrarily, and particularly en-masse, as occurs most frequently in the Philippines, the General Comment clearly asserts the child’s right to refuse to be ‘rescued’.

**CONCLUSION**

The UNCRC was created as a mechanism to acknowledge and protect the special vulnerability of children. Children with street connections fall into a category of exceptional vulnerability due to the multiple deprivations to which life on the street exposes them. The UNCRC was also revolutionary in terms of recognising the status of children as social actors – autonomous beings capable of rational and deliberate action. The challenge in relation to children with street connections is conciliating ‘their minority in law with their autonomy in fact’ to achieve the right combination of freedom and protection.

Throughout history, constructs of appropriate childlike behaviour, combined with both pity and fear, and frequently tempered by desires for ‘clean streets’ have motivated government interventions with children in street situations. For children in the Philippines these interventions have been overwhelmingly negative – ‘rescue’ has become something to run from.

The General Comment, for the first time, provides substantial guidance on how States should balance protection and participation rights as they relate to children in street situations. While clearly acknowledging the multiple deprivations and risks faced by street-connected children, it also challenges policies driven by notions of childhood that are

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91 Ibid, paragraph 14
92 Pare, Mona, ‘Why have street children disappeared? – The role of international human rights law in protecting vulnerable groups’ *The International Journal of Children’s Rights* 2003 (11) 1, 10
unrealistic for children living in developing contexts. Instead of simply removing children from the street, the General Comment encourages an approach of walking with children and empowering them to reduce their need to rely on the street for their survival.

The child’s right to be actively engaged in decision-making processes that affect him/her is deeply entrenched in this rights-based approach. Importantly, instead of simply revoking a child’s right to participation when there are concerns about ‘thin agency’, the General Comment emphasises the critical importance of empowering the child to be able to better informed and more actively engaged. When removed from the street, the child has a right to be cared for in appropriate conditions that respond to his/rights and respect his/her best interests.

Finally, and most critically, the General Comment explicitly notes that laws and policies that support the arbitrary removal of children from streets or public places directly discriminate against children in street situations and must be abolished. Moreover, children should never be deprived of their liberty as protection. This gives Filipino children a clear right to refuse being rescued in the manner it is most frequently practiced in the Philippines – arbitrarily and through deprivation of liberty.
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35. UN Committee on the Rights of the Child *General comment No. 21 (2017) on children in street situations* CRC/C/GC/21 (21 June 2017)


39. Westwood, Joanne, ‘Childhood in Different Cultures’ in Trisha Maynard and Sacha Powell *An Introduction to Early Childhood Studies* (Sage, 2013) 11

40. Yee, Jovic, ‘‘Rescued’ street families homesick’ *Philippine Daily Inquirer* (online) 18 November 2015 12:37am <http://newsinfo.inquirer.net/740526/rescued-street-families-homesick>